(1) Supreme Court, U.S.
FILED

171

NO 10-375 JUN 3 - 2010

~~OFFICE OF THE CLERK~~

IN THE

SUPREME COURT OF THE UNITED STATES

Bernice Perez, *Petitioner,*

v.

Wells Fargo Bank, Minnesota, National Associations, As Trustee for Registered Holders of Option One Mortgage Loan Trust 2002 Asset-Backed Certificates, Series 2002-A, WITHOUT RECOURSE,

Respondent.

On Petition for Writ of Certiorari
New York State Supreme Court, 2nd Cir.

PETITION FOR A WRIT OF CERTIORARI

Bernice Perez, Pro se
45 Oakland Avenue
Mount Vernon, N Y 10552
(347) 346-1920 (914) 619-8684

I

QUESTIONS PRESENTED

The following questions are presented by the petitioner.

1. Whether Petitioner honestly & truthfully receive "Fair Justice".
2. Whether it is Fair Justice for a U.S. Citizen to have their home fraudulently, forcibly taken by a tainted judicial process.
3. Prima Facie Case: Legal Question. Whether Plaintiff provided truthful supporting documents to substantiate their claim via Summons & Complaint; legal entitlement to sue via Mortgage Assignment; obtainment of Summary Judgment and entitlement for Judgment of Foreclosure and Sale.
4. Whether Plaintiff with full awareness of their actions under the Penalty of Perjury summon Petitioner into a court of Law
   Under Fraudulent, Negligent,
   Misrepresentation/concealment; no Legal
   Standing and thus prosecute and violate Petitioner's Civil and Legal Rights.

5. Major Legal & Constitutional Question whether Plaintiff was justified in their actions ,provided valid evidences, proof to substantiate and justify this matter if so why are we still here in any court of law almost seven (7) years later on the same matter.

6. Whether an American citizen has a constitutional right to petition the United States Supreme to review, investigate crimes committed against her.

7. Does an American citizen have a Statutory right to petition the United States Supreme Court to review, investigate crimes committed against her?

8. Has the New York State Court of Appeals, 2nd Circuit so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the Appellate Division-2nd Department, as to call for an exercise of this Court's supervisory power?

9. Whether The New York Supreme Court Hon. Linda S. Jamieson acted improperly and abused its discretionary power, particularly regarding the evidence presented by petitioner and with a lack of appropriate judicial clarity in improperly granting two

(2) conflicting decisions/Order and Granting Summary Judgment in Plaintiff's favor.

10. Did The New York Supreme Court of Westchester County, Hon. Linda S. Jamieson Err in the Granting of Summary Judgment by two (2) conflicting Decisions & Orders and violate Petitioner's constitutional and legal rights.

11. Whether Westchester County Supreme Court #11365/03 Hon. Linda S. Jamieson for Summary Judgment by evidence, issues rendered second Decision create a legal & Constitutional conflict with first Decision? A point that is sufficient either in itself or in Connection with the other points to resolve the entire case.

12. Whether Court violated Petitioner's Constitutional Rights to defend and Protect In the dismissal of Petitioner's factual evidence, denying and striking affirmative defenses, objections and protests raised to Plaintiff's unjust actions.

13. Whether Petitioner's rights legally and constitutionally are relinquish or compromised by the Court, attorneys retained to defend and protect such rights through Prosecutorial Misconduct.

IV

14. Did the Courts (Above) through its deliberate fail to consider all relevant facts which were called to the courts attention, improperly dismissed.

15. Whether Petitioner suffer usual and cruel Punishment through the Due Process Clause of the XIV Amendment.

16. Whether The New York Supreme Court Hon. Arazio Bellatonio act improperly and abused its discretionary power, particularly
Regarding the evidence presented by petitioner and with a lack of appropriate judicial clarity in improperly granting decision and Order in Plaintiff's favor for Foreclosure & Sale.

17. Did The New York Supreme Court of Westchester County, Hon. Arazio Bellatonio Err in Issuing an Order to Stay the Foreclosure and Sale after his Order & Decision of Foreclosure and Sale?

The Parties to the proceedings:

The following list identifies all of the parties appearing in the caption of the case on the cover page and here and below:

New York State Court of Appeal, Albany, New York: were By Briefs & Appendix

Petitioner, Bernice-Perez, Pro se
Michael S. Hanusek, Esq., Attorney for Plaintiff

Respondent Wells Fargo Bank, Minnesota, National Associations, As Trustee for Registered Holders of Option One Mortgage Loan Trust
2002_A Asset-Backed Certificates, Series 2002-A,
WITHOUT RECOURSE

Presiding:

Hon. Jonathan Lippman, Chief Judge.

New York Appellate Division-Second Department Brooklyn, New York: were By Briefs & Appendix

Petitioner, Bernice Perez, Pro se

Michael S. Hanusek, Esq., Attorney for Plaintiff

Respondent Wells Fargo Bank, Minnesota, National Associations, As Trustee for Registered Holders of Option One Mortgage Loan Trust 2002_A Asset-Backed Certificates, Series 2002-A, WITHOUT RECOURSE

Presiding: E. Rivera J.P., Howard Miller, John M. Leventhal, Cheryl E. Chambers, JJ.,

The Additional parties are:

N Y S Supreme Court, in Westchester County, Hon. Linda S. Jamieson, Presiding

Attorneys of Record for Plaintiff

Attorney Greg Tabakin., Esq., Attorney Mikelle V. Komor, Esq.

Bernice Perez, Defendant

Atty. Carol Marks, Esq., Harry Stokes, Esq., Patricia A. Mooney Esq. Attorneys of Record for Appellant

VII

CORPORATE DISCLOSURE

Wells Fargo is a banking corporation duly licensed, organized and existing pursuant to the laws of the United States of America states.

The United States of America, The people of the State of New York, The State Tax Commission of the State of New York, the industrial Commissioner of the State of New York, and all other agencies or instrumentalities of the federal, State or local government (however designated), if named as defendants, are made parties solely by reason of the facts set forth.

Wells Fargo is a HUD-Approved Lender
US Department of Housing

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85 NY2d 20.

Cite: Teller v Bill Hayes, Ltd., 213 AD 2d 141.

Elder Abuse Law

Cite: California Civil Code § 3345 subdivisions (f),(g). Sec. 1761.

Cite: Federal Older Americans Act of 1965: (See Heisler,1991).

Cite: Vulnerable Elder Rights Protection Program: Lauchs & Pillemer, 1998). (Stiegel, 1995; Moskowitz 1998).

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Cite: Title VI: Guardians 463 U.S. 582,642 n.13; TARP,

The Supreme Court Held: Guardian, supra: Alexander v. Choate, supra. Villanueva v. Carere, 85 F... 3d 481(10th Cir. 1996).

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28 C.F.R. §42 104 (b)(2) Receipt of TARP Taxpayer, Homeowners Money pursuant to such regulations (Wells Fargo) receive Federal Funding (TARP) taxpayer dollars enter into standard agreements or provide assurances require certification that (Wells Fargo will comply with the implementing regulations and operate under the color of the Law and the Constitution under Title VI:

Guardians 463 U.S. 582,642 n.13;

OPINIONS BELOW

The Opinion of the Court of Appeals:

#2010-331 is final

The Opinion of the Appellate Division:

#2008-09852 is final

Published: The Appellate-Division-2nd Department decision June 25, 2008 to lower court Order & Decision Hon. Linda S. Jamieson Granting Summary Judgment December 16, 2005. 1st Appeal #2006-851 Wells Fargo Bank Minn., Assn. v Perez, 41 AD3d 590, 590).

JURISDICTION

Notice is given that Petitioner (Bernice Perez) hereby petitioning the United States Supreme Court which this Court has jurisdiction for a Writ of Certiorari pursuant to: **Article** III Section 2 of the Constitution of the United States: 28 U.S.C. §1651(a)(b) Constitution, Amendment II. for Review of the Decision of the Opinions expressed on the

dates noted upon the Grounds and controversies to which the United States shall be a party are not in conformity with Constitutional or legal law and is unwarranted by the evidence presented to the gravity involving this total miscarriage of Justice.

Constitutional Law on Judicial Review: Marbury v. Madison, 5 U.S. (1 Cranch)137 (1803) it is the

"The province and the duty of the judicial department to say what the law is."Id. at 177-178.

> 1st Amendment Right: " Congress shall make no law abridging the right to petition the government for a redress of grievances".

Issuance by the Court of an writ authorized by 28 U.S.C. §1251 Will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief

cannot be obtained in any other form or from any other court.

Ripeness Doctrine 331 U. S. 549

Constitutional law under which the United States Supreme Court, in accordance with its policy of self-restraint, will not decide cases in advance of the necessity of deciding them.

> "Because the State has the power to stop the infringement of individual rights, its failure to do so constitutes a state decision to permit the violations.

Court Declared: Denying includes inaction as well as action the omission to protect as Well as the omission to pass laws for protection."

All the points that should have been fully addressed and justified by Respondent Wells Fargo/Option One and the lower courts before entry of a final adjudication upon the

rights of the Petitioner in this matter have not been nor never have been fully resolved by Fair Justice.

28 U.S.C. §1251 Constitution, Amendment II. The Supreme Court shall have original and

Exclusive Jurisdiction of all controversies between citizens of different States:

Petitioner: Bernice Perez resides in:

State of New York State, Mount Vernon, New York, Westchester County.

Respondent: Wells Fargo/Option One Mortgage is organized under the laws of the State of California with its principal place of business in: Irvine California engaged in the business of

Issuing mortgage loans throughout California, and throughout the United States, that violate

The laws identified herein: Wells Fargo Legally chartered in: Sioux Falls, South Dakota.

STATEMENT OF CASE OF PETITIONER

Agency/Case origination: Index #11365/03

N YS Supreme Court, Westchester, County

111 Martin Luther King Jr. Blvd., White Plains, New York.

Hon. Linda S. Jamieson

COURT OF APPEALS#2010-331

Date of Decision: May 6, 2010

Appellate-Division #2008-09852

Date of Decision: Feb. 9, 2010

Appeal taken from: N Y S Supreme Court, Westchester County, Hon. Arazio R. Bellatonio, And J.S.C.Dated: September 24, 2008.

1. Jurisdictional stat – Civil Matter-Judgment of Foreclosure & Sale
2. Appeal taken To: Appellate Division -2nd Department.
3. Designate any statues, 5601, CPLR 5601(b) 1, CPLR 5601 (b) 2.

   Article III Section 2 of the Constitution of the United States: 28 U.S.C. §1651 U.S. Constitution, Amendment I.

   Ninety (90) Days from due deliberation Court of Appeal 2010-331- Denied Petitioner's

   papers for Review: CPLR 5501 Motion Leave to Appeal.

ISSUES TO BE RAISED TO THE COURT

Orders & Determination

CIVIL RIGHTS

"An injustice anywhere creates and injustice everywhere".

Dr. Martin Luther King.

Justice means TRUTH, fair and proper administration of laws concerned with the relations between persons and especially with fairness in the exchange of goods and the fulfillment of contractual obligations.

Fair Justice is not based on abuse ,violation of American citizen's legal or constitutional rights to achieve any goal by misuse, unethical, deceptive behavior or, Fraudulent documentation.

Racial Discrimination: Civil Rights Act of 1964 Violation- Under 14th Amendment: Equal Right to Home Ownership; Due Process and Equal

Protection re: Nationality, race, age and Gender,

42 U.S.C. §§1981,200h.

Cite : Inside Mortgage Finance.

Cite: Center for Responsible Lending Statics 2006.

Cite: National Community Reinvestment Coalition Statics.

Cite: Federal Reserve Board-Conclusion

Cite: The United States Inspector General Report.

Business Law §321: Consumer Protection from Deceptive Business Practices.

Violation Business Law § 349 : General

Statue subdivision 12 section 63 (b) (1) (2) of the executive law.

General Business Law § 349(a): deceptive acts, practices in conduct of any business in this State (NY) is unlawful.

Penalty for offenses against elderly:

Wells Fargo target elderly single African American women. I am a 62 year old Female Retired Computer Operations Manager, Verizon who was not a irresponsible home buyer and purchase a home I could not afford.

Cite: Karlin v VF Am, 93 NY2d 282; New York Univ. v Continental Ins. Co., 87 NY2d 308).

New York Univ. v. Continental Ins. Co.. Supra; Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, 85 NY2d 20.

Cite: Teller v Bill Hayes, Ltd., 213 AD 2d 141.

Elder Abuse Law:

Cite: California Civil Code § 3345 subdivisions (f),(g). Sec. 1761.

Cite: Federal Older Americans Act of 1965: (See Heisler, 1991).

Cite: Vulnerable Elder Rights Protection Program: Lauchs & Pillemer, 1998). (Stiegel, 1995; Moskowitz 1998).

Intentional Discrimination/Disparate Treatment, impact & effect: Model Penal Code §224.7(5).

Elston, Supra, 997 F 2d at 1406.

(Quoting Williams v. City of Dotham, Alabama, 745 F 2d 1406 14: (11"Cir 1964).

Class Action Complaints against: Wells Fargo Mortgage.

New York Group filed w/Federal Regulators to block Wells Fargo & Co

Acquisition of Seattle based Pacific-Northwest Bancorp, due to denying

Home loans to minority borrowers and "predatory Lending Practices.

Illinois, Attorney General Lisa Madigan Suing Wells Fargo targeting African-Americans and Latino.

1. Roddy, Klein & Ryan, Boston. Mass. Class Action-Wells Fargo.
2. Complaint filed California, San Francisco Superior Court by Attorney Edmund G. Brown, and Lawsuit against Wells Fargo -False & Deceptive Practice.
3. The Association of Community Organization for Reform Now: Lawsuit alleging San-Francisco based

4. Wells Fargo inaccurately reported Loan balances for Calif. Customers to Credit Reporting agencies.
5. NAACP-Class Action Suit, Baltimore Maryland-Wells Fargo.

Consequences of Wells Fargo Practices & Intent: Lau v. Nichols 414 U. S. 563, 568 (1974).

Respondent Wells Fargo is not a benefit to the housing Industry but a strong negative destructive abusive force to Families & Communities of African-American &

Latino but not as much Caucasian families by their habitual behavior.

This is a bank that is not to "big to fail but needs to fail and be brought down".

Wells Fargo and /or their Counter parts, Attorneys add to the break-down, eroding belief and trust for obtainment

Of fair justice in the judicial system by their deceptive business practices and tactics.

"That justice is blind, unobtainable and only opens her eyes for those she wants to'.

TITLE VI & Title VII: The Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

Baldwin v. University of Texas Medical Branch at Galveston, 945 F. Supp. 1022, 1031(S.D. Tex. 1996).

Brantley v. Independent School District No. 625, St. Paul Public Schools, 936 F. Supp. 649, 658 n. 17 (D. Minn. 1996).

The Supreme Court Held: Guardian, supra: Alexander v. Choate, supra.
Vilanueva v. Carere, 85 F.. 3d 481(10th Cir. 1996).

New York Urban League v. New York 71 F. 3d 1031, 1036 (2nd Cir. 1985).

Chicago v. Lindley, 66 F 3d 819 (7th Cir. 1995); David K.v. Lane, 839 F. 2d 1265(7th Cir. 1988).

Gomez v. Illinois State Bd. Of Education 811 F. 2d 1030 (7th Cir. 1097).

Georgia State Cont. v. Georgia 775 F. 2d. 1403 (11th Cir. 1985).

Larry P. v. Riles, 793 F. 2d. 969 (9th Cir. 1984).

Alabama NAACP State Conference of Branches v. Wallace, 269 F. Supp. 346, 351 (M.D. Ala.

Civil Rights Violation: Fair Housing Act, 42 U.S.C. §3601 et seq.

Wells Fargo Bank, NA has engaged in disparate treatment of African-American, and
Has adopted facially neutral policies and practices that have a disparate discriminatory impact on African-Americans in residential mortgages.

It is beyond dispute the African American community has long been the victim of discriminatory banking practices. Generations of African Americans have been deprived the opportunity to participate in the American dream by banks simply because of the color of their skin, or place in unfavorable loans that decimate them financially.

Efforts to Achieve Voluntary Compliance: -42 U.S.C. § 2000d-1. See Alabama NAACP State Conference of Branches v. Wallace, 269 F. Supp. 346, 351 (M.D. Ala. 1967.

Violation of NYS Banking Laws §§ 595-a Section 6.1: Mortgage Fraud, Consumer Protection.

Subject to Licensing by the Superintendent of under Article XIII-B of the banking Laws.
Violation NYS Banking Laws Article 12-D
NYS Banking Complaint #03 M 1874 August 22, 2003 (Ref. Court of Appeal & Appellate Div. Appendix 2. P. 695-697).

NYS 2nd Complaint # 04 M 987 May 11, 2004 June 8, 2004 (Ref. Court of Appeal & Appellate Div. Appendix 2. P. 775-790 Complaint April 29, 2004.

September 29, 2003 NYS Banking Department (Ref. Court of Appeals & Appellate Div. Appendix Vol.2.P-792-811) (Ref. Court of Appeals & Appellate Div. Appendix Vol.2.P-796-799) Attorney General's Office, Shannon C. Hitt, Mediator File # CFA03A06396,(Ref. Court of Appeals & Appellate Div. Appendix Vol.2.P-800,808,811)

WSR03N01563 Respondent's response was the same as of August 22, 2003 to NYS Banking.

Petitioner's Complaint Letters (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2. P. 718-723; P.724-729). (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 P.558-561).

_X__CPLR5601 (a) Dissents on the law at the Appellate Division:

Reinaldo E. Rivera J.P., Howard Miller, John M. Leventhal, Cheryl E. Chambers, JJ., concur 4 Judges out of 9 Judges

Difference between majorities centered on conflicting interpretations of law (Compare , Scheer v. Koubek)69 NY2d 983 consequent Conclusion as to whether Wells Fargo made out a Prima Facie Case: Legal Question. Matter of Gardstein v Kemp & Beatley, Inc.

Cite: Fraudulent & Negligent Misrepresentation: Misrepresentation Act

1967. (Derry v. Peek) (Hedley Byrne v. Heller [1964] A.C. 465; Esso Petroleum Co. Ltd. V.

Mardon [1976] Q.B; Krakowski v. Eurolynx Properties Ltd (1995) 183 CLR 563.

Facile Princeps: The evidence in the Court of Appeal 2010-331 & Appellate Div. Appendix 2008-0982 put forth in my defense show Respondent never rendered truthful, proof, evidence to support, substantiate their claim entitlement for Foreclosure & Sale, other Decisions and Orders by law outlined in this entire matter.

Dispute between majority and dissent focuses on (Sufficiency) not (Weight) of the Evidence to support finding of corporate oppression of shareholder:

Cite: Legal Question. Matter Merrill v Albany Med. Center Hosp. Dissent predicated
On unpreserved issues. Matter of Cindy M.G. v. Michael A.

The Court of Appeals has noted that even where a party's motion papers in opposition to a motion for summary judgment are "worthless", before summary judgment will be granted to the Wells Fargo such party must establish its prima facie entitlement to judgment as a matter of law (Trepuk v. Frank, 56 NY2d

779 [1982], revsd for reasons stated in op. Of dissent in A.D., 86 AD2d 578, 579 [1st Dept. 1982] See also, Alvarez v. Prospect Hospital, 68 NY2d 320 [1986} Wingrad v. NYU Medical Center, 64 NY2d 851 [1985].

The Court of Appeals stated this succinctly: "before considering whether Petitioner, (Perez} has put forth sufficient proof to defeat Respondent (Wells Fargo/Option One Mortgage) motion for summary judgment, the issue of whether Respondent has established its entitlement of Motion Order Granting Summary Judgment must first be addressed". (Olan v. Farrell Lines Inc., 64 NY2d 1092, 1093 [1985.

Legal Standing - Threshold Issue Appeal# 2008-09852. The Appellate Division rule Petitioner did not raise the issue of Legal standing in Pre-Answer.

Petitioner Response: "Never waived claim and such claims, rights should not have been waived,

relinquish by any of the three (3) attorneys in their legal expertise retained to defend and protect should have raised all such issues with a vigorous defense.

Petitioner's Attorney of Record –Atty Carol Marks, Esq.

Factual evidence:

1. Wells Fargo Lack proper standing to have brought By CPLR 3215(f) Summons & Complaint (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2. P. 611-666) July 17, 2003 alleging Assignment "to be assigned" (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2. P. 658 Notice of Pendency of Action 7/17/03). Mortgage Assignment control #440340539 alleged recorded 03/12/04 Certified 12/03/08 Westchester County Land $ Records Office, Rm.345

(Ref. Court of Appeal & Appellate Div. Appendix Vol.2.P.592-595).

2. No legal, official NOI required by Notice of Intention to Foreclose under the Fair Foreclosure Act is a necessity. Proof required by Section 1303 (RPAPL) of the Real Property Actions and proceedings Law was given to Petitioner (Perez)) 30 Days prior or at the time that the summons and complaint was served July 17, 2003 Index #11365/03, on colored paper other than the color of the summons and complaint.

The Court must decide whether Respondent's inability to demonstrate such compliance with the NOI provision of the Fair Foreclosure Act requires the dismissal of Plaintiff's complaint.

a. Postal Service certified mail receipt indicating that Respondent sent the NOI via certified mail to Petitioner.

b. Postal Service returns receipt verifying that the Petitioner received the NOI; A certification of mailing signed by the bank employee who mailed the NOI.

"Where the facts permit conflicting inferences to be drawn, summary judgment must be denied" (Morris v. Lenox Hill Hospital, 232 Ad2d 184-5 [1st Dept. 1996]); any issue determination on a summary judgment is strictly prohibited (Straus v. New Wah Fung Corp., 269 AD2d 140 [1st Dept.2000]; Dollas v. W.R. Grace & Co., 225 AD2d 319 [1st Dept. 1996]; Cochrane v. Owens-Corning Fiberglas Corp., 209 AD 2d 557, 559-60 [1st Dept. 1995]; Rivera v.

NYC, 212 Ad2d 403 [1st Dept. 1995]; Tunsupong v. Bronx Lebanon Hospital,

213 AD2d 236-7 [1st Dept. 1995]; Harris v. NYC, 147 AD2d 186, 191 [1st Dept. 1989].

Respondent's June 30, 2003 letter(Ref. Court of Appeal & Appellate Div. Appendix Vol. 2.P.610).
Respondent's Reinstatement Quotes rendered July 22, 2003 & August 13,2003 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2 P.686-690).

Respondent Reinstatement Quotes is requesting Petitioner doubly pay Increment Amt. 651.00+2541.00 regular Mortgage payments already rendered totaling $3191.00/$3200.00 or should have been by Repayment Agreement 590.00+2541.00 totaling $3131.00 W/Overchg $60.00 . None of these Reinstatement Quotes for arrears demand payments represent existing

Repayment Agreement. Conflicting July 22,2003 requesting $10,183,84 for(4)arrears payments 2540.91 x4 one(1)late charge of 660.66(extortive & outrageous)as due & August 13,2003 arrears of 12,704.80 for (5) arrear payments(2540.96 x 5)

Late charges of 711.48(extortive & outrageous)

Respondent 's Monthly Statement 11/16/02 for late Fee charges (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2 P. 691).

Petitioner never owed late fees. All payments rendered to Respondent on any mortgage payment deemed late included a late fee charge of $52.00/53.00.

Section 6 of RESPA (12 U.S.C.2606) Consumer rights. Written request was questioned July 23, 2003 by Petitioner's Attorney Carol Marks request for Loan History to Respondent's employee Rolando Ragaas(Ref. Court of Appeal & Appellate Div. Appendix Vol.2 P.678-679).

Rendered: (Ref. Court of Appeal & Appellate Div. Appendix Vol.2.P.668) Option One Lexi Leland authorized Associate Ref. #51170 investor ID 666 July 30, 2003 was Verification of Mortgage next payment due 4/1/03.

Petitioner's first Credit Report received CDI-Info1, July 8, 2003 by a Real Estate Broker(Ref. Court of Appeal & Appellate Div. Appendix Vol.3.P.1012)stated last Payment, by Respondent as January,2003 (False) date, method of reporting information inserted June 2003 prior to Summons & Complaint of July 17, 2003.

On a motion for summary judgment, all that needs to be shown is the existence of triable issues of fact [cits.],and in making that determination, the court should draw all Reasonable inferences in favor of the non-moving party (Perez).

Judge Linda S. Jamieson 1st Decision March 22, 2004. (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2P. 765-767).

Petitioners Payment Receipts W/ Breakdown of payments (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2 P. 607-609; 731-754).

Actual Fraud/Fraud In Fact, Fraud upon the Court via: misrepresentation concealment. Petitioner's Attorney of Record: Harry S. Stokes, Esq.

Respondent (Under Penalty of Perjury) bring forth with OOps! We forgot to tell the court the existence of Repayment Agreement.

Respondent's' Repayment Agreement, Faxed January 17, 2003 by Vincent Calderone (Ref. Court of Appeal & Appellate Div. Appendix Vol.2.P. 599-606). (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 P 756-763).

All payments totaling $7068.00 remitted to Respondent by Western Union Quick Collect. (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 &3.P.791 Western Union Verification).

MTCN#658-515-1246 12/23/02 $2691.00 declined by Respondent 01/02/03. Resent 01/06/2003 MTCN 658-540-2421;

November, 2002 remitted December 27, 2002 remitted $2600.00 MTCN 658-059-9464.

December, 2002 MTCN658-553-4852 informed by Mr. Calderone to send only $1795.00.

There was no need for forced deceptive establishment Repayment Agreement to be signed January 21, 2003 under the immediate threat of Foreclosure.

Additionally, the moving party (Wells Fargo/Option One Mortgage)must prove his case "clearly

and completely" (Curry v. Mackenzie, 239 NY 267, 269 [1924] before the opposing party can be required to show facts creating a triable issue of fact (Lurie v. Childs Hospital, 70 AD2d 1032 [3d Dept. 1979], Curry v. Mackenzie, supra, Sacramona v. Scalia, 36 AD2d 942 [1st Dept. 1971], O'Connor-Sullivan Inc. v. Otto, 283 AD 269 [3d Dept. 1954]).

Also of direct relevance to the case at bar is the rule that "In a motion for summary judgment, the moving party Respondent has the burden of setting forth evidentiary facts sufficient to establish its cause sufficiently to entitle him to Judgment as a matter of law; anything less requires a denial of the motion even where the opposing Petitioner 's papers are insufficient" (Coley v. Michelin Tire Corp., 99 AD2d 745,796 [2d Dept. 1984]).

Thus, where there is a "conflict" in "Testimony" it is "inappropriate" to "Grant a Summary Judgment Motion,

since to do so would require the court to weigh issues of credibility" (Botfeld v. City of New York, 162 AD2d 652 [2d Dept. 1990]).

In fact, it has even been held that where a movant has adduced "strong evidence" in support of motion for summary judgment, the motion must be denied when the opposing papers raise a real issue of material fact (Roman Maronite Catholic Church v. Metropolitan Heat & Power Co. Inc., 137 Ad2d 513,514 [2d Dept. 1988]).

Respondent did not tender sufficient admissible evidence "No Loan History or Accounting Statement rendered to dispute Petitioners payments" to show that there were no material issues of fact, the burden was shifted to

Petitioner to produce admissible proof establishing that there was a material issue of fact.

Petitioner's 1st Attorney Carol Mark mailing of June 2003's payment (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P.667).

Respondent 's Attorney Greq Tabakin Claimed Return of June 2003 payment, August 12, 2003 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P.692-694).

Parenthetically, it is a settled precedent that the facts should be viewed in a light more favorable to the opposing party by a court when considering a summary judgment motion (Sillman v. 20th Century Fox Corp., 3 NY2 d 295 [1957], Nestlerode v. Federal Ins. Co., 66 AD2d 504 4th Dept. 1979]). And, a "deficiency in the affidavits on both sides cuts against the Respondent rather than against the Petitioner[Perez] because it is the moving party who is seeking summary judgment, and the burden rests on him to establish affirmatively that his adversary does not have a viable cause of action against him" (O'Connor-Sullivan Inc. v. Otto, supra).

In this regard, the Court of Appeals has cautioned that it is improper for a court considering a summary judgment motion to make any determination as to the merits of any of the parties' claims despite any personal feelings the court may have in this regard (Black v. Chittenden, 69 NY2d 665 [1986]). Indeed, even where a court finds a particular claim to be "questionable', the court cannot Grant a motion for summary judgment where there exists some dispute or conflict on a material Issue of fact pertinent to the case under review(Berliner v. Thompson, 149 AD2d 887,889 [3rd Dept. 1989]).

2nd Decision and Order, Hon. Linda S. Jamieson rendered April 12, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 4. P.1339-1345).

Respondent's Attorney Mikelle V. Komor September 30, 2004: Affirmation in Support of Motion to Renew (Ref. Court of Appeal & Appellate Div. Appendix Vol.2&3 P.813-939).

PLAINTIFF IS ENTITLED TO RENEWAL OF THE MOTION FOR SUMMARY JUDGMENT CPLR 2221(e)provides that: A motion for leave to renew: shall be identified specifically as such; based on new facts not offered on prior motion that would change the prior determination or shall demonstrate there has been a change in the law that would change The prior determination: and shall contain reasonable justification for the failure to present such fact on the prior motion.

Petitioner Argument:

A. What was Respondent reasonable justification which never questioned by the Court or attorneys.
B. When was a default declared after the establishment of Repayment Agreement to which Petitioner was abiding by?
C. Why such issue was not brought forth on Summons & Complaint.

REASON: acknowledgment of such Agreement in effect" would have voided Respondent any grounds to have commence such proceeding via Summons Complaint.

Conflicting Question Prosecution of: Greq Tabakin Request for Order Granting Summary Judgment W/Affidavit of Farah Torres-Carr, Foreclosure Specialist Dated November 6, 2003 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2.P. 700—710). (Extortive) Allegation -Petitioner made no payments since October 1, 2002 Now it's one (1) Payment (June 2003).

PLAINTIFF'S AWARENESS OF: NYS Banking: Complaint #03 M 1874 August 22, 2003 (Ref.Court of Appeal & Appellate Div. Appendix 2. P. 695-697).

THEREFORE: This was not/is not and never has been "New Found evidence or New Facts not offered on the prior Motion" of Repayment Agreement all issues was brought to the attention of Respondent.

Attorney Harry Stokes Supplemental Affirmation in Opposition to Respondent's Notice of Motion to Renew October 15, 2004 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 3. P. 944-960).

Respondent's Attorney Mikelle V. Komor, Reply Affirmation to Petitioner's Attorney Harry Stokes Supplemental Affirmation in Opposition to Notice of Motion To Renew October 28, 2004(Ref. Court of Appeal & Appellate Div. Appendix Vol.2 &3 P.940-943).

Attorney Harry Stokes November 17, 2004 Request for Valid Accounting and Pay-off figure(Ref. Court of Appeal & Appellate Div. Appendix Vol. 3. 961).

Petitioner's December 10, 2004 fwding of Credit Files to Atty. Harry Stokes for Respondent's Atty. Mikelle Komor (Ref. Court of Appeal & Appellate Div. Appendix Vol. 3. 962-964).

January 27, 2005 Court Hearing

Respondent's Attorney Mike V. Komor request Notice of Motion to Renew January 27, 2005 to be heard February 24, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol.3. P. 1098-1289).

Respondent' s Attorney Mikelle V. Komor should not have been allowed to Renew such Motion by Judge Linda S. Jamieson without Attorney of Record Harry Stokes Missing in Action by misconduct and not in attendance. Matter should have been postponed.

Equal Credit Opportunity Act U.S.C §1981 et seq.

Reporting Act: §602. Congressional Findings statement of purpose {15 U.S.C.$1681](a) Accuracy. fairness of Credit reporting. Congress findings: (1)(2) (3) (4) the banking system is dependent upon fair, accurate credit reporting. §603{15 U.S.C. § 1681] (h)(2) (6) Adverse Action to interests of the consumer.

(Ref. Court of Appeal & Appellate Div. Appendix Vol.3.P.1012-1038 Credit Files)Plaintiff's Erroneous conflicting insertions to Petitioners(Perez)Credit Files.

§617 Civil liability non compliance {15 U.S.C. § 1681c] In the case of (A)$623. Responsibilities of furnisher of information to consumer Reporting agencies enforcement {15 U.S.C. $ 1681 2](1)(A)(B(i)(ii)(C)

(2)Duty to correct and update information: (A)(B)(3) upon notice of dispute: (1) (A)(B) (C)(D).

"Plaintiff had 30 days to correct discrepancies to which they did not"

Respondent's Attorney informed the court Judge Jamieson upon the mysterious absence of Petitioner's Attorney Harry Stokes.there was no there was no discrepancies in Petitioners Credit file which was outstanding Issue

Respondent' Attorney knew Mr. Stokes would not be in Court.

Petitioner must stand for self -Petitioner's Opposition/Affirmation Request for Trail February 5, 2005

Credit Files re-rendered to Respondent (Ref. Court of Appeal & Appellate Div. Appendix Vol.3 P 985-1090).

Petitioner Atty Harry Stokes re-emerge Affirmation in Opposition, February 24, 2005(Ref. Court of Appeal & Appellate Div. Appendix Vol.3 P 1091-1097).

NYS 2nd Complaint # 04 M 987 May 11, 2004 June 8, 2004 (Ref. Court of Appeal & Appellate Div. Appendix 2. P. 775-790). To Appellant Complaint April 29, 2004.

Issues under discussion: Forced Loan History Respondent's late fee generating every week on History and discrepancies of Petitioner's rendered payments .

Spoilation litigation evidence See 166 N.J. 391.

Respondent cannot forcibly declare a default based on Attorney Mikelle V, Komor rendering a defaced motion to hide pertinent evidence re: Repayment Agreement and

tampering with Petitioner's June 2003's payment (Ref. Court of Appeal & Appellate Div. Appendix Vol.4.P.1421 in question by inserting Void to create a controversy to obtain Summary Judgment.

No other payment in The Casebook File to justify this allegation and the entertainment for Judge Linda S. Jamieson to even have consider in Decision & Order (Ref. Court of Appeal & Appellate Div. Appendix Vol. P 1339-1342) as an issue not there March 22, 2004 Decision and Order.

Not marked VOID when remitted by :

Petitioner 's Attorney Carol Mark mailing of June 2003's payment (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P.667).

Not marked VOID when retuned by :

Respondent's Attorney Greq Tabakin Claimed Return of June 2003 payment, Dated August 12, 2003 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P.692-694).

Payment never returned backed to the Court after received backed by Petitioner which immediately taken to Petitioner's Attorney Carol Marks Office.

PETITIONER'S NEW ATTORNEY OF RECORD after dismissal of Harry Stokes- Patricia Ann Mooney, Esq. Attorney Patricia Ann Mooney Affirmation in Opposition W/Petitioner Affirmation in Opposition to Plaintiff's Motion for Summary Judgment and Order of Reference, September 23, 2005(Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1558-1638).

Respondent's Atty. Mikelle, Komor Notice of Motion for Summary Judgment September 23, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1346-1526). And Order of Reference October 12. 2005) again moved for an Order striking Defendant's Answer and Affirmative defenses and appointing a referee to compute the sums due to Plaintiff.

Atty. Patricia Mooneys (Ref. Court of Appeal & Appellate Div. Appendix vol.4.P.1549-1557 Professional service Statement) informed me Respondent's Atty. Mikelle Komor, didn't have a problem with the short pay-off but the Company, MGIC Insurance, 270 East Kilbourn Avenue, Milwaukee,Wisconsin 53202 that held the PMI Insurance Certificate #16433008, refused such offer. I faxed her the document from mortgage validating there was no PMI Insurance on said mortgage with 20% down-payment paid $73,000 on property ($365,000).

Petitioner tried every avenue to get from under Wells Fargo and save our Home.

Southern Star Mortgage, Ralston Calder and many more (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P. 768-774).

Petitioner choose 1st Capital Mortgage Company 3125 Veterans Memorial Highway, Suite 3, Ronkonkoma, NY 11779 to refinance

(Ref. Court of Appeal & Appellate Div. Appendix Vol.4.P. 1527-1548) submitted to the Court through Attorney Randall Chiera of Chiera & Associates a short-payoff letter from Carmine Notaro.

Respondent's destruction to Petitioner's Credit Files (Ref. Court of Appeal & Appellate Div. Appendix Vol.3 P 1012-1038) to prevent any type of Refinancing.

Answer filed November 1, 2005 by Bernice Perez, reluctant Attorney Patricia Mooney (Ref. Court of Appeal & Appellate Div. Appendix Vol. 4.1558-1638).

Respondent Attorney Mikelle Komor November 7, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1639-1644).

Cite: Attorney Komor 's Statements #6, #7, #8

Contention Petitionre tried to force her client to take short pay off. Amount owed due on Mortgage originally 289,

994.00 at now $425,000 . When Appraisal (Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P.315-335) value of $645,000 was submitted to the Court regarding Refinance (Ref. Court of Appeal & Appellate Div. Appendix Vol.4.P.1527-1548) Respondent Attorney stated would rather repossess/foreclose sell the property, be paid in full which would have been to the enrichment of Respondent.

Larceny Theft: Model Penal Code §223. 53 So. 2d 533, 536. Statue of : Westminster I. c. 15 (1275).

Violation home Equity Protection Act.

This effectively dilutes the equity from the property places the Petitioner in jeopardy of further default, and puts the Petitioner in the position of spending years paying off additional Loan balances without developing any equity.

Court Required: To determined whether disputed material issues of fact existed prior to determining whether Summary Judgment could be granted on constitutional claims; threshold finality inquiry; Matter of Morley v. Town of Oswegatchie, 70NY2d 925.

Summary Judgment Standard was not properly granted. (Tainted Process) Respondent did not establish their cause of action or defense sufficiently to warrant the Supreme Court, Hon. Linda S. Jamieson, Granting Summary Judgment December 16, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 4.P.1653-1654) as a matter of Law in Plaintiff's favor.

Disciplinary rule 1-102 200.3] Malicious Prosecutorial Misconduct, Ineffective and inadequate Counsel.

There is no Character assassination " buried here amid a stream of consciousness attacks on the character of Respondent/attorneys involved," as stated by Respondent's Attorney Michael Hanusek the record, actions and behavior of all remotely connected speaks for itself:

Petitioner is not guilty of Libel or Slander and can truthfully and honestly face anyone of my accused in any court of Law to all my defenses.

A lawyer or Law Firm shall not: Violate a Disciplinary Rule.

1. Circumvent a Disciplinary Rule through actions of another.
2. Engage in conduct in illegal conduct involving dishonesty, Fraud, deceit, or misrepresentation.
3. Engage in conduct that is prejudicial to the administration of justice.

Respondent's Attorneys Fein, Such, Kahn, Sheperd should be fully investigated for their Procedural and Judicial tactics, practices and behavior.

Carol Marks of Ross & Mark, LLP, 559 Gramatan Avenue, Mount Vernon, New York, 10552- Attorney of Records On Summons and complaint for Petitioner.

No known impariarties-mutual severance with this attorney.

Attorney Harry M. Stokes, 49 Raemont Road, P.O. Box 192, Granite Springs, New York 10527-0192.

Petitioner January 7-28, 2005 trying to contact Harry Stokes(Ref. Court of Appeal & Appellate Div. Appendix Vol.3 P.965-984).

Atty Harry Stokes Letter April 8,2005 to Petitioner's : Request returns Case File & discharge himself as Attorney(Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P.1316-1317).

Petitioner's notification to Court April 21, 2005 re: Change of Attorney (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P.1318-1338).

Atty. Harry Stokes Motion to Withdraw as Counsel, May 3, 2005(Ref. Court of Appeal & Appellate Div. Appendix Vol.4. P. 1343-1345).

Chiera Assoc., Patricia A. Mooney Esq., 800 Central Park Avenue, Scarsdale New York.
Order to Show Cause, May 2, 2006 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4. P 1655-1660).

Petitioner's Reply Affirmation May 15, 2006 to Attorney Patricia Ann Mooney Order to Show Cause, May 2, 2006 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P.1661-1668).

Judge Linda S. Jamieson Decision & Order to Order to Show Cause May 31, 2006 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4. P 1669-1672).

A lawyer should be temperate and dignified, and should refrain from all illegal and morally reprehensible conduct. The lawyer's position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplies respect for law:

APPELLATE DIVISION-2nd Department

Weigh of the evidence: The evidence presented by Petitioner regarding Respondent's documentations, contradictory actions, behavior, conflicting allegations depending on what court Respondent is in Res ipsa Loquitur (speaks for itself) and a new Trial should be granted.

Difference between majority and dissent based on differing view of underlying facts, not applicable legal standard]; Karger, Powers of the New York Court of Appeals § 6:15,, at 203-207 [rev 3d. ed]).

In deciding a case a court should find facts on the basis of the evidence presented then apply the **law** to those facts. The evidence presented by Petitioner throughout this matter prove Respondent never had TRUE entitlement, justification for obtainment of any order Decision, commencement of this proceeding in these court of Law.

Constitutional Question CPLR 5601(b)(1): VII Amendment Right

Whether a substantial constitutional question is presented is a determination that must be made on a case by case basis. The Court has examined the nature of the constitutional interest at stake, the novelty of the constitutional claim, whether the argument raised may have merit, and whether a basis has been established for distinguishing a State Constitutional claim from a Federal constitutional claim.

State &Constitutional claim

Violation Petitioner's V Amendment Rights

Cite: Bill of Rights -Trial by jury shall be preserve when value in controversy exceed $20.00. Due Process Obligation of contracts taking of property; prohibited discrimination; Jury trail in Civil Cases.

Petitioner's many request for trial by Jury of my peers in this matter has been constantly denied by Respondent's continuous opposition to the court to deny such request and contention: The granting of Summary Judgment is the procedural equivalent of a trial and results in a final judgment on the merits Collins v Bertram Yacht Corp 42, NY2D 1033, 399NYSD 202

Petitioner admitted and never denied that her contentions were not properly outline as stated by: Appellate Division-2nd Department Decision May 11, 2007 on Petitioner's prior Appeal, January 13, 2006 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 4. P.1673-1674).

Such lost was not due to Petitioner rendering to any court of law false illegible documentation to substantiate or validate my defenses. Petitioner fought this matter in a defensive manner not a vindictive manner to the best of my ability. Petitioner responded to all Respondent's fraudulent, false allegations, summons thru and by an attorney until forced to precede Pro se due to Prosecutorial Misconduct, mistrust and malicious Prosecution.

VIII Amendment & XIV Amendment Rights due to: Cite: (See Louisiana ex rel. v. Resweber, 329 U.S. 459 (1947) Suffer cruel & usual Punishment-

The Supreme Court assumed "arguendo" that cruel and unusual punishment clause applied to the states through the Due Process Clause of the XIV Amendment. Robinson v. California, 370 U.S. 660 (1962) Furman v. Georgia, 408 U.S. 238 (1972), Justice Brennan re: four Principles for determination "Cruel and unusual.

Respondent /attorneys in this matter caused injury to Petitioner to form a trusting relationship with

any attorney by such unethical behavior and prosecution and thus had to teach myself to be my own attorney.

> "After being "Thrown to the wolves. left to sink or swim with one week to file an Appeal, save our home, with no legal expertise, duress, health constraints creating the failure of 1st Appeal 2006-851 taken January 13, 2006.

The Court has stated that questions that have been "clearly resolved against an appellant's position*** lack the degree of substantiality necessary to sustain an appeal As of right under CPLR 5601(b) (1)" Matter of David A.C. 43 NMY2d 708, 709.

The doctrine forecloses re-examination of an issue "Absent a showing of subsequent evidence or change of Law" (J-Mar Serv. Ctr,. Inc. v Mahoney Conner & Hussay, 45 AD3d 809, 809, quoting Matter of Yeamierre v Gutman,

57 AD2d 898, 899).And rested on an Independent non constitutional ground. Matter of Fossella v. Dinkins.

Direct Involvement: Karger, supra § 7:8, 7-9-7:10, at 231-243:

The Legal & Constitutional issues were raised and preserved: Judge Linda S. Jamieson 1st Decision March 22, 2004. (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2P. 765-767).

> "The Court is not able to determine if Respondent was justified in seeking to hold the Petitioner in default when the instant action was Commenced." (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2. 611-666).

Matter of Schulz v State of New York, 81 NY2d 336,344; Matter of Shannon B., 70 NY2d 458, 462. Matter of Skenesborough Stone, Inc. v. Village of Whitehall, 95 NY2d 902.

Subsequent Evidence :

SUBSTANTIALITY: :Karger, supra § 7:5, at 226-228.

The (Appellate Division –Second Department 2008-09852) stated: "Moreover, Appellant provides no basis for re-examining those issues".

The Appellate Division(see Wells Fargo Bank Minn., Assn. v Perez, 41 AD3d 590, 590) affirm decision Dated June 25, 2008 to 1st Appeal 2006-851 of the lower court Order & Decision.

Federal Claim: Extrinsic Fraud; Fraud in Fact; Actual Fraud; Fraud in the Inducement; Intrinsic Fraud; Fraud in the Factum; Fraud upon the Judicial System to Undermine the integrity of this Judicial System.

Respondent's Attorney Mikelle V.Komor own testament deceptively caused Appellate Division –2nd Department

Decision & Order May 11, 2007 to Affirmed Supreme Court, Hon. Judge Linda S. Jamieson Decision for Summary Judgment December 16, 2006

A. In Respondent Brief on prior Appeal 2006-851 August 9, 2006 P. 16.17 Respondent's Attorney Mikelle V.Komor own testament all needed to be surrendered for Summary Judgment was ownership rights " Legal Standing" by Mortgage Assignments # 440340539 Certified 12/10/2009. Respondent's Right to sue questionable must be decided to resolve this Controversy.

B. In Respondent Brief on prior Appeal 2006-851 August 9, 2006 P.16,17 Respondent 's Attorney Mikelle V.Komor own testament: "Petitioner made no Payment for June 2003 thus Summary Judgment was granted. (False, Condtradictory & Conflicting) (Ref. Court of Appeal & Appellate Div. Appendix Vol.2

P.692-694).Respondent's Attorney Greg P. Tabakin return of June Payment.

(Ref. Court of Appeal & Appellate Div. Appendix Vol.2.P. 667) Petitioner's Carol Mark Mailing of June 2003 Payment.

C. Attorney Mikelle Komor Testament November 7, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1639-1644) having June payment returned by Attorney's Office and obtaining Summary Judgment which Petitioner Filed Appeal 2006-851.

Result of Casebook Transactions printed 10/14/2008 & 3/30/2009 Westchester County Clerks Office There is still No Notice of Entry by Respondent 's Attorney Mikelle V. Komor or Petitioner's Attorney Patricia A. Mooney which validate never rendered as alleged to Petitioner The Granting of Summary Judgment 12/16/ 2005.

On the other hand, a constitutional argument need not prevail on the merits to support an appeal on constitutional grounds. Rose v. Moody, 83 NY2d 65,69.

Statutory limitations grounds:

Fraudulent Conveyances in violation of Debtor & Creditor Law §§ 273,275, 276-Time barred-six year statue of limitation.

Appellate & Court of Appeal

NOTICE OF PENDENCY: Civil Practice Law and Rules Section 6511, 6513, CPLR, 6513(a),(b), 6514 Article 65 of CPLR .

Cite: In the Matter of Sakow, 97 N.Y. 2d 436, 441 (2002); 13 Weinstein, Korn & Miller, NY Civ. Prac, §6513.04 (2000); Israelson v. Bradley, 308 NY 511, 516 (1955). If the terms are not met, the privilege is at an end.

RPAPL §1331 Failure to comply with the filing requirement "precludes entry of Final Judgment".

Cite: Martini v. Charles Rogers.

Cite: Second Department Affirm: Nassau County Supreme Court Justice Roy S. Mahon in EMC Mortgage Corp. v. Stanley Stewart

A notice of Pendency is effective for a period of three years from the date of filing CPRL §6513.

A. An order to extend a notice of pendency must be filed, recorded, and indexed before the prior notice of pendency has expired.

B. HOWEVER: A Conference was scheduled On July 25, 2006 Westchester County Supreme Court 111. Martin

C. Luther King Jr. Boulevard, White Plains New York Hon. Judge Linda S. Jamieson, Room 1401 since assigned to Matrimonial Court.

Respondent's Attorney Mikelle V. Komor informed the Legal Assistance newly assigned Judge William S. Giacomo, Respondent was withdrawing their Motion for Foreclosure and Sale filed April 17, 2006.

Respondent's Attorney Mikelle V. Komor did not request an extension, renewal of such Notice of Pendency (Original July 17, 2003- July 2006) which by expiration, became ineffective-cannot be revived on the same cause of action or claim.

Respondent Attorney Jace McColley, Esq., Notice of Motion For Judgment of Foreclosure and Sale(Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P. 40-176)Renewed Notice of Pendency 4/7/08 (Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P.50)

The complaint herein and due Notice of Pendency of this action containing all the particulars required to be stated therein was duly filed in the Office of the Clerk of the County of Westchester on 04/07/08 was only rendered to Petitioner in this motion on July 3, 2008 which has a 2 year lapse (July17, 2006- July 17 2008) and by expiration

became ineffective cannot be revived on the same cause of action or claim.

Respondent's Attorney Jace Mccolley's incorporated affidavit of Joyce Bonner , Sr. Legal Action Specialist Vol.1. P. 86-92 attests and mirror to the same false, fraudulent, deceptive conflicting, contradictory allegations and controversy of defaulted on Mortgage of no payments since October 1, 2002 is totally false and brought rise to the Issues in this matter:

Respondent needs to justify the issues to this allegation regarding Petitioner's payments October 1, 2002 or Default of June 2003 Payment to resolve this controversy.

Summons & Complaint - Respondent' s Attorney Greg Tabakin Affidavit of Farah Torres-Carr, Foreclosure Specialist November 6, 2003 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2.P. 700-710).

1. Respondent's Atty. Mikelle, Komor Notice of Motion for Summary Judgment and Order of Reference, (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1346-1526) incorporated affidavit of Joyce Bonner , Sr. Legal Action Specialist (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1354-1360).

Respondent's Attorney's Jace McColley's Affirmation of Regularity in support for Judgment of Foreclosure and Sale and Attorneys' Fees states: Petitioner (Perez) duly served with the complaint have not served any answer or appeared to the complaint and the time therefore have expired; except through her former Attorney Carol R. Mark,Esq. filed contested answer, and said answer was struck by the Court granting Summary Judgment filed entered on 12/16/2005.

Plaintiff's Attorney Fee's should be denied.

Appendix nor Casebook does not substantiate such contention.

Petitioner's- 1st Answer-Affirmation In Opposition Dated & Stamped Westchester County Clerk July 15, 2008 to Respondent's Attorney Jace McColley, Notice of Motion For Judgment of Foreclosure and Sale(Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P. 177-369).

Petitioner's- 2nd Answer-Affirmation In Opposition Stamped Westchester County Clerk July 17, 2008 to: Attorney Jace McColley, Notice of Motion For Judgment of Foreclosure and Sale(Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P. 371-476).

Attorney Jace McColley, served Petitioner November 14, 2008 with Notice of Entry (Ref. Court of Appeal & Appellate Div. Appendix Vol. 1. P. 26-39) decision of Judge Bellatonio Dated September 24, 2008 Foreclosure and Sale entered Westchester County Clerks Office November 17, 2008 w/Affidavit of Service by process server Jill Eckenrode, legal Assistant of Fein Such and Kahn &

Shepard sworned/ notarized October 29,2008 by Plaintiff's Attorney is Questionable.

Petitioner had obtained decision of Judge Bellatonio September 24, 2008 for Foreclosure and Sale (to keep Time Chain in tact) from Westchester County Clerk's Office and Appeal filed Oct 21, 2008 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 1. P.5-25).

The Court of Appeals and Appellate Division case law makes it abundantly clear that "[s]tanding to sue is critical to the proper functioning of the judicial system. It is a threshold issue."Saratoga County Chamber of Commerce, Inc. v Pataki. 100NYS2d 801,812(2003), cert. Denied US 1017 (2003), See also Household Finance Realty Corp. of New York v. Wynn, 19 AD3d 545 (2d Dept 2005); Sears Mortgage Corp. v Yahhobi, 19 AD3d 527 (2d Dept 2005); U.S. Bank Trust Nat. Ass'n Trustee v Butti, 16 AD3d 408 (2d Dept

2005);First Union Mortgage Corp. v Fern 298 AD2d 490 (2d Dept 2002);Village Bank v Wild Oaks Holdings, Inc., 196 Ad2d 812 (2d Dept 1993).

Legal Standing, subject matter jurisdiction, issue whether declaratory judgment action is proper vehicle to test constitutionality of legislative enactment. Kerrigan v. Kenny 64 NY2d 1109.

Respondent Attorney Jace McColley, Esq., Notice of Motion For Judgment of Foreclosure and Sale (Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P. 40-176)

Plaintiff Affidavit of Facts didn't have a Certificate of Conformity and comply with CPLR 3215. A Chain of Title and all applicable deeds must be submitted with this application. "if Respondent is not the original Mortgage Holder on original mortgage the names of the original mortgagee and a recital of all assignments in the chains of Title must be submitted".

Signature of the property owner(s) must be notarized on this application Form.

PLAINTIFF LACKS STANDING CPLR § 3215 (f): (d) Adjudication of Plaintiff's breach of Duty.

Mortgage Assignment(secured debt)that lack possession or formal Assignment of Note (unsecured debt)cannot force Sale of the property to satisfy debt and thus be Foreclosed upon.

Mortgage Assignment must be accompanied by Note.

Respondent Attorney Jace McColley, Esq., Notice of Motion For Judgment of Foreclosure and Sale (Ref. Court of Appeal & Appellate Div.Appendix Vol.1.P. 40-176) Vol.1.P.107 P.157 Blacked-out unreadable Bar Code recorded on 03/08/02 as Holder under control #420580426 Type of Instrument MTGB Serial #C850454).(Certified by Petitioner (Ref. Court of Appeal & Appellate Div.

Appendix Vol.2. P.569-584)12/10/08 Westchester County Clerks Office Land Records, Rm. 345 Assignment For the sum of $292,000.

Petitioner never received notification of a 'Goodbye letter from First Alternative Mortgage who has never been before this Court in any proceedings and law Prohibits- 3rd Party Standing. Nor received a "Hello" regarding any transfer of mortgage.

(Ref. Respondent Attorney Jace McColley, Esq., Notice of Motion For Judgment of Foreclosure and Sale (Ref. Court of Appeal & Appellate Div.Appendix Vol.1.P. 40-176) Vol. 1. P.117-119; P167 Blacked out unreadable Bar Code Assignment 430870131) (Ref. Court of Appeal & Appellate Div. Appendix Vol2. P. 585-586 Pertitioner Certified 12.03/08).

(Ref. Court of Appeal & Appellate Div. Appendix Vol. 2. P. 587-591 Servicing Notification #331005398 January 4, 2002) Servicer of Mortgage ONLY.

Whether Respondent Wells Fargo Option One was justified in copying Appellant-Defendant name/and or initial (BP) and posting to another document to create, establish, execute a Fraudulent Mortgage transfer.

Plaintiff's Attorney Jace McColley, Esq., Notice of Motion For Judgment of Foreclosure and Sale(Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P. 40-176).

The inclusion of Assignment 440340539 Wells Fargo stated(to be assigned always questionable) and acquired Summary Judgment December 16, 2005 alleged recorded March 12, 2004 Westchester County Clerks Office Land & Records, Rm. 345(Ref. Court of Appeal & Appellate Div. Appendix

Vol.2.P.592-595 Petitioner Certified 12/3/08) is now totally omitted entirely in this motion. Why is that?

Judgment of Foreclosure and Sale September 24, 2008 Hon. Arazio Bellantonio (Ref. Court of Appeal & Appellate Div. Appendix Vol 1. P.15-20; P.31-36).

Notice of Foreclosure Sale December 15, 2008, Referee ($528,086.87) Plaintiff's Referee Oath & Report Theodore John Brundage, Esq. 500 Mamaroneck Avenue, Suite 320. Harrison, NY 10528 received 11/10/2008 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 P.562-563).

Order to Show Cause & Stay Foreclosure & Sale.

Petitioner's Attorney Jan Riley Order to Show Cause Hon. Orazio R. Bellantonio, J.S.C Dated: December 12, 2008 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P. 477-525).

Respondent Affirmation In Opposition to Order to Show Cause December 30, 2008 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 .P 526-557).

Petitioner Attorney Jan Riley Reply Affirmation January 6, 2009 to Respondent's Affirmation In Opposition to Order to Show Cause December 30, 2008 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 P.558

__CPLR5601 (b) (2): Constitutional ground: Direct Appeal from the Court of Original Instance .

The only question involved must be the constitutionality of a statutory provision: where issues are involved that must be resolved in addition to the constitutional question the appeal is transferred to the Appellate Division (Jetro Cash and Carry Enters. V. State of New York Dept. of Taxation and Fin. []Town of Brookhaven v, State of New York 70 NY2d 990

Question of statutory interpretation that could be dispositive of constitutional question. New York State Club Assn. v. City of New York, 67 NY2d 717.

The Court (Appellate Division –Second Department 2008-09852) has stated: "the defendant's remaining contentions are either without merit or not properly before this court."

FALSE: The documents and evidence speaks for itself. All points argued are sufficient either in itself or in connection with the other points argued to resolve or should have resolved the entire case.

Thus does not constitute: Granting any decisions constitutionality or legally in this matter in favor of Respondent Wells Fargo.

X CPLR5601 (d) (2) Final Judgment, order, determination or award seeking review of a prior Appellate decision Order Appeal # 2006-851.

Pursuant CPLR 5501 Review of Summary Judgment

December 16, 2005, Supreme Court, Judge Linda S. Jamieson.

Was appellant served by adversary with a copy of the order, judgment or determination appealed from and notice of its entry?___YES__X_NO.

Did the Appellate Division deny a motion for Leave to Appeal to this Court in this case ___YES__X_NO.

RELATED MOTIONS AND APPLICATIONS:

Does any party to the appeal have any motions or applications related to this appeal pending in the Court of Appeals? _ _YES__X_NO.

If Yes, specify:

Does any party to the appeal have any motions or applications in this case currently pending in the court from which the appeal is taken ___YES_X_NO.

If Yes, Specify:

Is any party to the Appeal asserting that a statue is unconstitutional? _X__YES___NO.

Has Appellant met the requirement of Notice to the Solicitor General in Section of the
Rules 29.4 of the Supreme Court of the United States?
__X_YES___NO.

Has Appellant met the requirement of Notice to the Attorney General in Section 500.9 of the Rules of the Court of Appeals? __X_YES___NO.

ITEMS REQUIRED for STATEMENT of the Case are in the Appendix, Brief at the Court of Appeals & Appellate Division-Second Department.

A. Copy of the filed notice of Appeal, to Appellate-Division Second Department Docket Assigned #2008-09852

B. October 21, 2008.(Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P.5-25

C. Judgment of Foreclosure & Sale Hon. Arazio R. Bellantonio NY Supreme Court, Westchester County Index #11365/03.

D. W/ Notice of Entry November 17, 2008(Ref. Court of Appeal & Appellate Div. Appendix Vol.1.26-39).

E. Hon. Linda S. Jamieson Granting Summary Judgment December 16, 2005. (Ref. Court of Appeal & Appellate Div. Appendix Vol. 4.P 1645-1654).

Motion to Reargue: Court of Appeal Dated June 25, 2008 #514 Denied.

Motion Leave to Appeal: Court of Appeal Denied March 18, 2008 as "Untimely".

List all other related Appeals :

Wells Fargo Bank Minn., Assn. v Perez, 41 AD3d 590, 590) affirm decision June 25, 2008 to 1st Appeal 2006-851 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4. P. 1645-1654).

Was testimony given at the hearing conducted by the Court of Appeals? No

If testimony was given the Court of Appeals & Appellate will send you a transcript.

Briefs, Appendix Rendered

Oral Argument: Petitioner , Bernice Perez, Pro se

Respondent , Plaintiff's Attorney

Michael S. Hanusek, Esq.,

Will not have oral argument.

Type of Brief to be filed: Formal Brief

Petitioner

Name: Bernice Perez

Address: 45 Oakland Avenue

Mt Vernon, New York 10552

Telephone: 347-346-1820

(914) 619-8684

Respondent

Name: Michael Hansquek. Esq.

Fein, Such, Kahn, LLP.

Address: 747 Chestnut Ridge Rd

Chestnut Ridge, NY Suite 200

Telephone: 845-371-4700

REASONS FOR GRANTING THE PETITION

Petitioner, Bernice Perez respectfully petition for a writ of Certiorari to review the judgment of the Appellate Division-Second Department &

Court of Appeals in this case. The State courts by Plaintiffs actions have embarked on an adhoc

exercise of judicial power which appears designed to thwart the will of the petitioner pursuit for Fair Justice.

Petitioner Certify under the penalty of Perjury: This request is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

The claims, defenses, and other legal contentions are warranted by existing law or by a non frivolous argument for extending , modifying , or reversing existing law or for establishing new law.

The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable

opportunity for further investigation or discovery, and Respondent in this matter for wrong doing complained of herein:

The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

SANCTIONS:

In general after notice and a reasonable opportunity to respond, the court determines that Rule 11 9B) has been violated. The court may impose an appropriate sanction on any Attorney, law firm, or party (Pro Se that violate the rule or is responsible for the violation.

The Petitioner (Perez) have been injured by the Respondent Wells Fargo/Option One Mortgage is in real

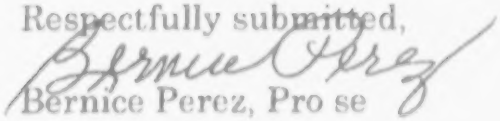
and imminent danger of suffering immediate injury as a result of Respondent (Wells)and/or their Attorneys unfair, fraudulent practices, unjust behavior , business practices conflicting abusive use of this Judicial System whereby constituting the rewarding of any Judgment/judgments and the unwarranted forcible taking of our home with this miscarriage of justice.

The Petitioner request this action seeking injunctive and other investigative relief against Wells Fargo/Option One Mortgage, from continuing their discriminatory practices, to compel their compliance with Federal law, and to ensure continuing compliance with applicable federal law.

CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,



Bernice Perez, Pro se

45 Oakland Avenue

Mount Vernon, New York

Tel: (347) 346-1920

(914) 619-8684

Supreme Court, U.S.
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10-375 JUN 3 - 2010
OFFICE OF THE CLERK

NO_____

IN THE

SUPREME COURT OF THE UNITED STATES

Bernice Perez, *Petitioner,*

v.

Wells Fargo Bank, Minnesota, National Associations, As Trustee for Registered Holders of Option One Mortgage Loan Trust 2002 Asset-Backed Certificates, Series 2002-A, WITHOUT RECOURSE,

Respondent.

Petitioners Appendix
On Petition for Writ of Certiorari
New York State Supreme Court, 2nd Cir.

PETITION FOR A WRIT OF CERTIORARI

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45 Oakland Avenue
Mount Vernon, N Y 10552
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New York Univ. v. Continental Ins. Co. Supra; Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, 85 NY2d 20.

Cite: Teller v Bill Hayes, Ltd., 213 AD 2d 14

Wells Fargo Practices & Intent: Lau v. Nichols 414 U. S. 563, 568 (1974).Cite: Ernest & Ernest v. Hochfelder 425 U.S. 185, 194 & N.12 (1976).

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Cite: P.H. Winfield , A Textbook of the Law of Tort § 128 at 434 (5th ed. 1950). Ck this

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Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (quoting Fed. R. Civ. P. 56 (c)).

Drewitt v. Pratt,999 F.2d 774, 778 (4th Cir. 1993) (quoting Anderson v. Liberty Lobby, Inc., 477 U. S. 242, 255 (1986).

999 F.2d at 778 (quoting Ross v. Communications Satellite Corp., 759 F 2d. 355, 364 (4th Cir. 1985)).

Anderson, 477 U.S. at 248

Ross, 759 F 2d. at 364. Anderson, 477 U.S. at 252.

Felty v. Graves-Humphreys Co., 818 F.2d 1126, 1128 (4th Cir. 1987) (quoting Celotex, 477 US. At 323-24).

Court of Appeals case law-Legal Standing

Cite: Saratoga County Chamber of Commerce, Inc. v Pataki. 100NYS2d 801,812(2003), cert. Denied US 1017 (2003). Household Finance Realty Corp. of New York v. Wynn, 19 AD3d 545 (2d Dept 2005). Sears Mortgage Corp. v Yahhobi, 19 AD3d 527 (2d Dept 2005).

U.S. Bank Trust Nat. Ass'n Trustee v Butti, 16 AD3d 408 (2d Dept 2005). First Union Mortgage Corp. v Fern 298 AD2d 490 (2d Dept 2002). Village Bank v Wild Oaks Holdings, Inc., 196 Ad2d 812 (2d Dept 1993).

Legal Standing: Mortgage & Note Assignments:

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SUPREME Court of New York, Suffolk County

Judge: Edward D. Burke , J. Decided August 7, 2006

Lasalle Bank National Association, As Trustee C/O Chase Home Finance, LLC, Plaintiff v.Michael Lamy, Joan Lamy, Defendant # 030049/2005

Summary Judgment ; Foreclosure & Sale

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Lexis 1901, 2006 WL 1985461; see also "MERS' Foreclosures continue to face challenges in Suffolk County Courts', by Sam Weisberg, 5/30/2006 NYLJ20, (Col.2):

Challenges to MERS Standing by Kenneth M. Block and Jeffery R. Steiner, 11/16/05 NYLJ 5 (copl.2); CF., Fairbanks Capital Corp. v. Nagel, 289 A.D. 2d 99. 735, N.Y.S. 2d 13..

Cite: Matter of Stralem 303 A.D. 2d 120, 758 N.Y.S. 2d 345, and the cases cited therein.

Cite: Slutsky v Blooming Grove Inn, Inc. 147 A.D. 2d 208 542 N.Y.S. 2d 721.

Cite: First National Trust Association v Meisels, 234 A.D. 2d 414, 651 N.Y.S. 2d 121.

Cite; Merritt v Bartholick, 36 N.Y. 44, 34 How. Pr. 129 1 Transc. App. 63;

Cite: Flyer v Sullivan 284 A.D. 697, 134 N.Y.S. 2d 521;

Cite: Beak v. Walts 266 A.D. 900, 42 N.Y.S.2d 652:

Cite: Manne v Carlson, 49 A.D. 276, 63 N.Y.S. 2d 162, supra; CF.,

Cite: Payne v. Wilson, 74 N.Y. 348.

Cite: Luetch-ford v. Lord, 132 N.Y. 465, 30 N.E. 859;

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Cite: Manne v. Carelson, 49 A.D. 276, 63 N.Y.S. 2d 162.

Cite: Smith v. Thompson, 118 A.D. 6, 103, N.Y.S. 336.

Cite: Slutsky v Blooming Groove Inn, Inc. 147 A.D. 2d

208 542 N.Y.S. 2d 721, supra.

XXI

FOOTNOTES

FOOTNOTE [1] "Plaintiff cannot suffer injury when not true mortgage & Note holder. No mention of First Alternative Mortgage the true Mortgage & Note Holder (Assignment #) . Only Defendant/Petition is damaged by this action". It was not by Defendant's Conduct but in fact Plaintiffs " Defendant made required payments by Mortgage & Repayment. Such favorable court decision would likely "Far exceed the value to which plaintiff would otherwise be entitle to but a maximum gain".

FOOTNOTE [2] Such Response by Respondent show full awareness of Repayment Agreement in effect-which at this point is avoiding at all cost like the plague.

FOOTNOTE [3] In regards to Judge Jamieson statement Plaintiff provided no information of accounting received or evidence to dispute Petitioner payments such as a Loan History Mortgage acct. 556949-6. This is a document that should be readily available upon request and would have helped validate Respondents false allegations and case.

FOOTNOTE [4] Should have been July 2003 's payment

FOOTNOTE [5] Petitioner not Plaintiff Renderance of the supposed Repayment Agreement as evidence to the Court.

FOOTNOTE [6] Plaintiff originally stood before this court on July13, 2003 by Summons & Complaint, Under the Penalty of Perjury and Verified complaint (Ref Vol. 2. #13 P. 615 "to be assigned"), "That Plaintiff is now the sole , true and lawful owner of the said bond(s) Note(s) and mortgage(s) securing the same and there have been no prior proceedings at law or otherwise, to collect or enforce said bond(s)note(s) and Mortgage (s) and none are currently Pending. This assignment now claimed Option One transfer Mortgage to Plaintiff.

FOOTNOTE [7] There is no Note Amount of $292, 000 on this Assignment. Nor does it state (MTGB) Mortgage Assignment. Therefore in what capacity is Wells Fargo on said Mortgage.

FOOTNOTE [8] This was Petitioners Closing Date and I was told Option One Mortgage would be the Servicer of the Mortgage.

FOOTNOTE [9] Servicer of Mortgage from First Alternative Mortgage Servicing #331005398 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2. P. 587-591.

FOOTNOTE [10] Ref. Jan riley Order to Show Cause (Ref. Court of Appeals & Appellate Div. Appendix Vol.2. P. 477-525).

FOOTNOTE [11] In ref Judge Footnote [1] ""Not Defendant's Attorney of record in this case". Carol Marks was Attorney of Record on Summons & Complaint (ONLY). No None Malicious Prosecutorial Misconduct. Mutual Parting "stated not equipped to handle further Litigation. The Attorney of record thereafter was Attorney Harry Stokes.

FOOTNOTE [12] June 2003 remitted by Petitioner's 1st Atty. Carol Marks upon retainment July 29, 2003. Respondent's Attorney Greg Tabakin's claimed return August 12, 2003 of such payment that Petitioner is now being declared in default for.

FOOTNOTE [13] Disciplinary rule 1-102 200.3] Malicious Prosecutorial Misconduct, Ineffective and inadequate Counsel.

FOOTNOTE [14] Respondent' Attorney knew Mr. Stokes would not be in Court and thought he had convinced Petitioner not to attend which would have cause a default for Petitioner. CRITICAL IMPORTANT NOTE: Plaintiff's Mikelle Komor rendered this disorganized distorted Motion to Renew (Ref. Court of Appeal & Appellate Div. Appendix Vol.2&3 P.813-939). (not Defendant) as referenced in Judge Linda S. Jamieson's Decision of April 12, 2005. Defendant has never rendered any illegible documentation to this court or any court in this matter.

FOOTNOTE [15] Plaintiff not Instructed but requested upon the mysterious absence of Attorney Harry Stokes that the court grant such motion.

FOOTNOTE [16] Respondent was made aware by NYS Banking Complaint 03 M 1874 July 30, 2003 received by Banking Aug 1, 2003 ; all other complaints to government agencies; all evidence put before

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Respondents re; the discrepancies in filing; Judge Jamieson 1st Order and Decision March 22, 2004 Vol. 2. P. 765-767 .

FOOTNOTE [17] Plaintiff originally stood before this court on July13, 2003 by Summons & Complaint, Under the Penalty of Perjury and Verified complaint (Ref .Vol. 2. #13 P. 615 "to be assigned"), "That Plaintiff is now the sole , true and lawful owner of the said bond(s) Note(s) and mortgage(s).

FOOTNOTE [18] On this assignment Wells Fargo now claim Option One Mortgage transferred Mortgage & Note to Plaintiff There is no Note Amount of $292,000 on this Assignment. Nor does it state (MTGB) Mortgage Assignment. Therefore, in what capacity is Wells Fargo on said Mortgage.

FOOTNOTE [19] Again this affidavit claimed Petitioner made no payments since October 1, 2002. Plaintiff's Motion filing allegations defaulted with Now it's only one (1) Payment June 2003; further allegations " Petitioner never tendered such June 2003 payment" (Conflicting) which was remitted by Petitioner's 1st Atty Carol Marks . The real issue that needs to be validated, clarified by Plaintiff What was the justification for such return of this June 2003's payment returned by Respondent's own Atty. Greg Tabakin now declaring a default.

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Another real issue that needs to be validated, clarified by Plaintiff marking of "VOID" on such June 2003's payment .

FOOTNOTE [20] Patricia A. Mooney's Professional Service Statement Validates that this issue was another stumbling block by Plaintiff that was put before Petitioner. Respondent's destruction to Petitioner's Credit Files (Ref. Court of Appeal & Appellate Div. Appendix Vol.3 P 1012-1038) to prevent any type of Refinancing. Southern Star Mortgage, Ralston Calder and many more (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P. 768-774).

FOOTNOTE [21] Petitioner's Atty. Patricia A. Mooney on Maternity Leave now.

FOOTNOTE [22] In this Reply Affirmation Respondents Attorney Mikelle V. Komor finally admit the June 2003's payment was sent back by her Office but not WHY such payment was returned after all this time of prosecuting by her motions Filing Petitioner that I defaulted by such payment; Petitioner never tendered such payment.

FOOTNOTE [23] Disciplinary rule 1-102 200.3] Malicious Prosecutorial Misconduct, Ineffective and inadequate Counsel.

FOOTNOTE [24] So now Did Option One Mortgage transfer the Mortgage back to the original Lender after it transferred it to Wells Fargo?

FOOTNOTE [25]So now Did Option One Mortgage transfer the Mortgage back to the original Lender after it transferred it to Wells Fargo?

FOOTNOTE [26] Ref. Atty. Jan R. Riley Order to Show Cause for Stay of Foreclosure and Sale Entered Westchester County Supreme Court, December 12, 2008 To Referee's Sale Date of December 15, 2008 . Hon. Orazio R. Bellantoni J.S. C. Dated December 30, 2008 (Court of Appeal & Appellate Div. Appendix Vol. 2. 526-557.

FOOTNOTE [27] Further Ohio Law recognized that issue of Jurisdiction can be raised by a party in a lawsuit at anytime.

CORPORATE DISCLOSURE

Wells Fargo is a banking corporation duly licensed, organized and existing pursuant to the laws of the United States of America states: That the United States of America, The people of the State of New York, The State Tax Commission of the State of New York, the industrial Commissioner of the State of New York, and all other agencies or instrumentalities of the federal, State or local government (however designated), if named as defendants, are made parties solely by reason of the facts set forth.

Wells Fargo is a HUD-Approved Lender

US Department of Housing

Wells Fargo-Board of Directors

James Richards, Executive President & Corporate Bank Secrecy Act Compliance Officer, Wells Fargo & Co. Author of "Transnational Criminal Organizations, Cybercrime, and Money Laundering" (CRC Press, 1998)

XXIX

Stephen D. Morrison, Vice President, Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A.
Serves on: Mortgage Bankers Association of America Federal Legislative , State Legislative & Regulatory (Chairman 2001-2003), Regulatory Compliance (Chairma 1991-1993), Quality Control, Financial Instutions (Chairman 1997-1999), and legal Issus Committees (Vice Chairman, 1997, 1998). Represents Wells Fargo Home Mortgage as a Director and Secretary of the Real Estate Services Providers Council (RESPRO). Chairman of the Board of the Electronic Financial Services Council (EFSC 1995-2000. Chairman, Board of the Mortgage Electronic Registration System (MERS) 1995-2000.

Wells Fargo Practice & Intent

Plaintiff intent to deceive, manipulate and defraud. Ernest & Ernest v. Hochfelder 425 U.S. 185, 194 & N.12 (1976)

Fraud Limitation:

"Not later than the earlier of :

A. Two years after the discovery of the facts constituting the violation.

B. Five years after such violation'.

38. U. S. C. § 1658 (b)

Perjury -Plaintiff's /Attorneys deliberate material false , misleading statements while under oath.

Conspiracy: An agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective. In (most states) action or conduct that further the agreement; a combination for an unlawful purpose. 18 USCA § 371.

Petitioners Answer:

Wells Fargo and Option One Mortgage: In joint venture for breach of its duty of good faith and fair dealing. (Wells Fargo) (Option One Mortgage, who claimed bankruptcy and operating under the title of American Home Mortgage Servicing, Inc. Ref. Court of Appeals & Appellate Div. Appendix Vol. 2. P 596)

A conspiracy's does not automatically end if the conspiracy's object is defeated. See Model Penal Code § 5.03 (7); United States v Jimenez Recio, 537 U.S. 270, 123 S Ct. 819 (2003).

Black's Law Dictionary Deluxe eighth Edition Defines:

"[Conspiracy is an } elastic, sprawling and pervasive offense...so vague that it almost defies definition. Despite certain elementary and essential elements, it also, chameleon-like, takes on a special coloration from each of the many independent offenses on which it may be overlaid. It is always 'predominantly mental in composition' because it consist primarily of a

meeting of minds and an intent." Krulewitch v. United States, 336 U.S. 440, 445-48, 69 S. Ct. 716, 719-20 (1949) (Jackson J., Concurring).

"When two or more persons combine for the purpose of inflicting upon another an injury which is unlawful in itself, or which is rendered unlawful by the mode in which it is inflicted, and in either case the other person suffers damage, they commit the tort of conspiracy."

Cite: P.H. Winfield , A Textbook of the Law of Tort § 128 at 434 (5th ed. 1950).

Agency: A Fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions .

"The basic theory of the agency device is to enable a person, through the services of another, to broaden the scope of his activities and receive the product of another's efforts, paying such other for what he does but retaining

for him any net benefit resulting from the work performed."

Cite: Harold Gill Reuschlein & William A. Gregory, The Law of Agency and Partnership § 1, at 3 (2d ed.

*First Alternative Mortgage (Ref. Court of Appeals & Appellate Div. Appendix Vol. 2. P.*597)

The 'Two Faces" of Wells Fargo and/or Attorneys will stand before a court and play the "Polly-Ann' role and do the total complete absolute opposite once outside to destroy the courtroom, to intimidate and defeat the Petitioner.

Therefore, if no true admittance of error then Plaintiff's actions, behavior is fraudulent intentional behavior.

Wells Fargo arrogant display of attempting to alter the Law simply on the basis of the size of their institution by Bulling and strong-arm tactics.

Wells Fargo brazen approach have been rejected by the Ohio Trial Court , Appellate Courts and rebuffed by the Ohio Supreme Court.

Wells Fargo and /or their Counter parts, Attorneys add to the break-down, eroding belief and trust for obtainment Of fair justice in the judicial system by their deceptive business practices and tactics.

Respondent's Attorneys Fein, Such, Kahn, Sheperd should be fully investigated for their Procedural and Judicial tactics, practices and behavior and interfering with Defendant's Attorneys.

Wells Fargo will spend thousands ,of dollars rather than admit that they have made an error by any means in their pursuit to forcibly, fraudulently taking of homes.

Arthur Meyer, Pre-imminent Expert on Banking States: "That every five years bankers like to step on a rake. This they did when they decided to play in a game of financial Russian roulette and then tried to steamroll

over their mistakes in court. You can of course fool some of the courts all the time, and for a while they were fooling all the courts all the time, but they cannot get past the adage in paraphrase that " you can't fool all the courts all the time." These players-all of them- particularly- Wells Fargo are imposters with only a fraudulent scheme on the agenda. In the process is causing a massive national bottleneck of title problems that will haunt anyone involved in land transfers for decades to come.

The issues presented in Wells Fargo v Jordan go beyond the greed or arrogance of banks, they go to the constitutional rights of citizens in Ohio and elsewhere to live free of anyone using the color of law and the cloak of the courts without even owning the note or mortgage that they are trying to foreclose.

We need to stick to basic Black letter Law for defense. When, and they will (Banks commit fraud on the court through fraudulent assignments and false

representation, the Defendant must become an Offendent (if you will) and move the Courts for Sanctions for nefarious conduct.

Respondent Wells Fargo's initiation of this proceeding and the continuance in Plaintiff's favor is actual malice. Plaintiff Wells Fargo/ Option One Mortgage have failed to make full and accurate statement of the true facts to these courts, which was by Misrepresentation/Concealment; falsified evidence, bad faith and perjury.

The Courts by such evidence have been forced to make misguided evidentiary rulings and a remand for a new trial is needed. Creditability is for a Jury.

Civil Rights

"Capitalism: The Love Story" Michael Moore-Documentary

Bill of Rights –Theodore Roosevelt – attempted Amendment before his death "Every citizen is entitle to a decent home".

Violation Petitioner's V Amendment Rights

Cite: Bill of Rights -Trial by jury shall be preserve when value in controversy exceed $20.00. Due Process Obligation of contracts taking of property; prohibited discrimination; Jury trail in Civil Cases.

CIVIL RIGHTS & CIVIL LIBERTIES

The Constitution' protections of individual liberties and its requirement for equal protection apply to the government.

Plaintiff is asking of the courts to provide, validate a cover for their actions and behavior by requesting my defenses, objections which defeat their actions to be denied is a violation of my Constitutional Rights to defend and protect.

VIII Amendment & XIV Amendment Rights due to: Cite: (See Louisiana ex rel. v. Resweber, 329 U.S. 459 (1947) Suffer cruel & usual Punishment.

The Supreme Court assumed "arguendo" that cruel and unusual punishment clause applied to the states through the Due Process Clause of the XIV Amendment. Robinson v. California, 370 U.S. 660 (1962) Furman v. Georgia, 408 U.S. 238 (1972), Justice Brennan re: four Principles for determination "Cruel and unusual.

> The fraudulent taking of someone's property is a cruel and usual punishment.
>
> The taking of someone's Dignity is a cruel and usual punishment.
>
> The unwarranted False Fraudulent Prosecution is cruel and unusual Punishment.

Wells Fargo target particular groups of minorities for this punishment rather than the courts, government imposing punishment on Wells Fargo for such specific repeated acts.

Wells Fargo's terrorize and abuse the people they are supposed to service by the unlawful fraudulent confiscation of property from minorities is a way of

inflicting pain and punishment without a true, fair and honest judicial trial. *Fletcher v Peck.*

Respondent Wells Fargo is not a benefit to the housing Industry but a strong negative destructive abusive force to Families & Communities of African-American & Latino but not as much Caucasian families by their habitual behavior.

This is a bank that is not to "big to fail but

needs to fail and be brought down".

PETITONERS ANSWER: Bill of Rights- V Amendment - Trial by jury Right: shall be preserve when value in controversy exceeds $20.00. Due Process Obligation of contracts; taking of property; prohibited discrimination; Jury trail in Civil Cases.

Plaintiff's Atty repeatedly states appellant lost; But how did Appellant lose? That Plaintiff doesn't want any sensible minded American Citizen to see. Plaintiff can only win by his Cronyism, Special Interest Conspirators

Plaintiff strong denial of an outside investigation of the true facts Plaintiff's questionable Legal Standing via , The Fraudulent and manipulate Mortgage Assignments; Plaintiff's attorney's tactics in the Court Proceedings to attempt wearing down of Petitioner by mental anguish and malice; The Destruction of Appellant's Credit Files. Fraud in the Inducement - Plaintiffs Repayment Agreement; False Statements To NYS Banking and other Government Agencies.

Plaintiff has never produced any factual, material [1]evidence to substantiate this Matter other than the "Forced" Petitioners Loan History by NYS Banking.

What petitioner experienced in this matter was not Civil Proceeding in a Court of Law but a "Circus" (or a old time lynching", if I may- Freedom of Speech) run by Wells Fargo (Ringmaster) and an entourage of his conspirators.

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[1] Ref. Judge Linda S. Jamieson March 22, 2004 Ruling

PLAINTIFF'S Attorney & Petitioner's Attorneys by the Oath they took should not put their careers in jeopardy. An Attorney's obligation is to provide a strong honest defense for the client they serve and not feed their hands from the "Left and Right"

MALICIOUS PROSECUTION: Section 1983

Abuse of process; Wells Fargo/ Option One Mortgage Intentionally instituted and pursued a legal Civil Proceeding without no true reasonable cause and belief for their action. Wells Fargo had full awareness of their false allegations.

This proceeding was brought against Appellant with no probable cause and no reasonable true believe for their actions.

This malicious prosecution, legal battle has caused and been very emotional for petitioner by this intentional wrong –doing of Respondent for which I am /was not guilty of has cost me and my family, time, unjust and unwarranted attorney's fees, mental anguish, embarrassment, damage to my reputation.

Petitioner responded to all Respondent's fraudulent, false allegations, summons thru and by an attorney until forced

to precede Pro se due to Prosecutorial Misconduct, mistrust and malicious Prosecution.

Baseless prosecution can ruin lives, destroy careers and cost innocent people thousands of dollars just to prove their innocence. Malicious prosecution can cause immense emotional or mental suffering such as anxiety, depression and post traumatic stress disorder.

Judge Arthur M. Shack's cases, State Supreme Court , Brooklyn , New York –

> "If you are going to take away someone's house, everything should be legal and correct,' "I'm a strange guy-I don't want to put a family on the street unless it's legitimate.'
>
> "Lenders should not lose sight, he wrote in his 2007 case, "That they are dealing with humanity, not with Mr. Potter's 'rabble and cattle' Multibillion -dollar corporations and banks must follow the rules in the

foreclosure actions or else they have become the Mr. Potters of the 21st century.

Judge Shack chastised Wells Fargo for filing error-filled papers. "The court, "reminds Wells Fargo of Cassius's advice to Brutus in Act 1 , Scene 2 of William Shakespeare's 'Julius Caesar': "The fault, dear Brutus, is not in our stars, but in ourselves.' "

Wells Fargo behavior can be recognized in the many :

Class Action Complaints against: Wells Fargo Mortgage.

Is everyone wrong ?

Consequences of Wells Fargo Practices & Intent: Lau v. Nichols 414 U. S. 563, 568 (1974).

Wells Fargo Investor's Fraud-Accused of Securities Fraud in the State of California Lawsuit, Atty. Gen. Jerry Brown. The state of California accused Wells Fargo & Co. of Fraud for the company's role in an investment meltdown that has been compared to the Bernard Madoff scandal in magnitude.

New York Group filed w/Federal Regulators to block Wells Fargo & Co Acquisition of Seattle based Pacific-Northwest Bancorp, due to denying Home loans to minority borrowers and "predatory Lending Practices.

Illinois, Attorney General Lisa Madigan Suing Wells Fargo targeting African-Americans and Latino. Roddy, Klein & Ryan, Boston. Mass. Class Action- Wells Fargo.

Complaint filed California, San Francisco Superior Court by Attorney Edmund G. Brown, and Lawsuit against Wells Fargo -False & Deceptive Practice.

The Association of Community Organization for Reform Now: Lawsuit alleging San-Francisco based Wells Fargo inaccurately reported Loan balances for Calif. Customers to Credit Reporting agencies.

NAACP- U.S. District Court Class Action Suit, Baltimore Maryland-Wells Fargo prey on poor.

"We have a whole different generation, a whole different set of people who are homeless as a result of foreclosures.'

Intentional Discrimination/Disparate Treatment, impact & effect: Model Penal Code §224.7(5).

Elston, Supra, 997 F 2d at 1406.

(Quoting Williams v. City of Dotham, Alabama, 745 F 2d 1406 14: (11"Cir 1964).

CIVIL RIGHTS PENALTY AGAINST THE ELDERLY:

Cite: The Matter of: Robert Carloni Westchester County Supreme Court, Index #09-22639, a 82 year old veteran, and neighbor who does suffer slight dementia with a home purchased in 1948 with a foreclosure of $800,000 owing to Option One Mortgage/ American Home Mortgage.

Wells Fargo target elderly single African American women. I am a 64 year old Female Retired Computer Operations Manager, Verizon who was not a irresponsible home buyer and purchase a home I could not afford.

Cite: Karlin v VF Am, 93 NY2d 282; New York Univ. v Continental Ins. Co., 87 NY2d 308). New York Univ. v. Continental Ins. Co.. Supra; Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, 85 NY2d 20.

Cite: Teller v Bill Hayes, Ltd., 213 AD 2d 141.

Elder Abuse Law:
Cite: California Civil Code § 3345 subdivisions (f),(g). Sec. 1761.

Cite: Federal Older Americans Act of 1965: (See Heisler, 1991).

Cite: Vulnerable Elder Rights Protection Program: Lauchs & Pillemer, 1998). (Stiegel, 1995; Moskowitz 1998).

TITLE VI & Title VII: The Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

Baldwin v. University of Texas Medical Branch at Galveston, 945 F. Supp. 1022, 1031(S.D. Tex. 1996).

Brantley v. Independent School District No. 625, St. Paul Public Schools, 936 F. Supp. 649, 658 n. 17 (D. Minn. 1996).

The Supreme Court Held: Guardian, supra: Alexander v. Choate, supra.

Vilanueva v. Carere, 85 F.. 3d 481(10th Cir. 1996).

New York Urban League v. New York 71 F. 3d 1031, 1036 (2nd Cir. 1985).

Chicago v. Lindley, 66 F 3d 819 (7th Cir. 1995); David K.v. Lane, 839 F. 2d 1265(7th Cir. 1988).

Gomez v. Illinois State Bd. Of Education 811 F. 2d 1030 (7th Cir. 1097).

Georgia State Cont. v. Georgia 775 F. 2d. 1403 (11th Cir. 1985).

Larry P. v. Riles, 793 F. 2d. 969 (9th Cir. 1984).

Alabama NAACP State Conference of Branches v. Wallace, 269 F. Supp. 346, 351 (M.D. Ala.

Civil Rights Violation: Fair Housing Act, 42 U.S.C. §3601 et seq.

Wells Fargo Bank, NA has engaged in disparate treatment of African-American, and has adopted facially neutral policies and practices that have a disparate discriminatory impact on African-Americans in residential mortgages.

It is beyond dispute the African American community has long been the victim of discriminatory banking practices. Generations of African Americans have been deprived the opportunity to participate in the American dream by banks simply because of the color of their skin, or place in unfavorable loans that decimate them financially.

IX Amendment 1791- Section 1 provides: The enumeration in the Constitution , of certain rights, shall not be construed to deny or disparage others retained by the people.

XIV Amendment- 1868-No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;
The Bill of Rights protects individual freedom- Request for Trial by Jury.

(Ref. Court of Appeal & Appellate Div. Vol. 2. P. 611-666

Appendix A.

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF WESTCHESTER

Wells Fargo Bank, Minnesota, National Associations, As Trustee for Registered Holders
of Option One Mortgage Loan Trust 2002_A Asset-Backed Certificates, Series 2002-A, WITHOUT RECOURSE

Plaintiff SUMMONS

V

Index No.
03/11365

Bernice Perez Defendant

Received July 17, 2003
Leonard N. Spano
County Clerk of Westchester

Mortgaged Premises:

45 Oakland Avenue
Mount Vernon, NY 10552

TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED to answer the Complaint in the above entitled action and to serve a copy of your answer on the plaintiff's attorney within twenty (20) days after the service of this Summons, exclusive of the day of service, or within (30) days after completion of service where service is made in any manner than by personal delivery within the state. The United States of America, if designated as a defendant in this action may answer or appear within (60) days of service hereof. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint. In the event that there is a deficiency in the sale proceeds, a deficiency judgment may be entered against you.

WESTCHESTER County is designated as the place of trial. The basis of venue is the location of the mortgaged premises.

Dated: July 13, 2003.

"s/ ".

Mikelle V. Komor, Esq.
Fein, Such & Crane, LLP.
Attorneys for Plaintiff
Office and P.O. Box
747 Chestnut Ridge Road

Chestnut Ridge, N Y 10977

Tel No. (845) 371-4700

All supporting documents

Pursuant to 22 NCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York, certifies that upon information and belief and reasonable inquiry, the contentions contained in the annexed documents are not frivolous.

July 13, 2003

"s/".

Signature

Mikelle V. Komor

Please take notice that the within a (certified) true copy of a entered in the clerk of the within named court on

That an Order of which the within is a true copy will be presented for settlement to the

Hon. One of the judges of the within named court.

Fein, Such & Crane, LLP.

Attorneys for Plaintiff

747 Chestnut Ridge Road

Petitioners Answers & Defenses

SUMMONS & VERIFIED COMPLAINT

Legal Standing: Mortgage Assignment

Requirements:

Injury; Causation; Redress ability: Plaintiff's access to the court to get Satisfaction or payment for harm done.

Plaintiff must have suffered or imminently will suffer injury; injury must not be abstract and must be within the zone of interests meant to be regulated or protected under the statutory or constitutional guarantee in question.

The party suing must have something to lose in order to sue unless they gave automatic standing by action of law.

Factual Evidence: Under the Penalty of Perjury Plaintiff's Summons.& Complaint the Verified complaint states (Ref .Vol. 2. #13 P. 615), "That Plaintiff is now the sole, true and lawful owner of the said bond(s) Note(s) and mortgage(s) securing the same and there have been no prior proceedings at law or otherwise, to collect or enforce said bond(s)note(s) and Mortgage (s) and none are currently Pending.

Plaintiff's Notice of Pendency of Action Vol .2. P.658 Assignment "To Be Recorded".[2]

Wells Fargo lack proper standing to have commence action by CPLR 3215(f) Summons and Complaint (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P. 611-666) July 13, 2003.

Petitioner never received notification of a 'Goodbye letter from First Alternative Mortgage Assignment Control # 420580426 (MTGB) Note Sum of $292,000. Nor alleged transfer to Wells Fargo Assignment Control #440340539.

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[2] "Plaintiff cannot suffer injury when not true mortgage & Note holder. No mention of First Alternative Mortgage the true Mortgage & Note Holder (Assignment #) .
Only Defendant/Petition is damaged by this action". It was not by Defendant's Conduct but in fact Plaintiffs " Defendant made required payments by Mortgage & Repayment. Such favorable court decision would likely "Far exceeds the value to which plaintiff would otherwise be entitle to but a maximum gain".

Efforts to Achieve Voluntary Compliance: -42 U.S.C. § 2000d-1. See Alabama NAACP State Conference of Branches v. Wallace, 269 F. Supp. 346 , 351 (M.D. Ala. 1967.

Plaintiff was not in Compliance but in Violation of NYS Banking Laws §§ 595-a Section 6.1: NYS Banking Laws Article 12-D. Mortgage Fraud, Consumer Protection. Subject to Licensing by the Superintendent of under Article XIII-B of the banking Laws.

Petitioner's 1st Complaint NYS Banking Dated August Dated: August 16, 2003(Ref Court of Appeal & Appellate Appendix Vol.2. P.718-722 w/ Carol Marks Dated December 29, 2003 Affidavit in Opposition to Respondent's Atty. Greg Tabakin request for Summary Judgment and Referee to Compute. Respondent's To NYS

Banking #03 M 1874Dated August 22 2003 Ref Court of Appeal & Appellate Appendix Vol.2. P.695-697).[3]

Petitioner's answers & Defenses

ALL EVIDENCE PRESENTED to the Plaintiff, & Court prior to this Decision of March 22, 2004 by Petitioner to show the many conflicts and question Plaintiff's Filing of Summons and Complaint and that an error had been made here.

Petitioners Payment Receipts W/ Breakdown of payments (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2 P. 607-609; 731-754) rendered to the Court.

Appellant-Defendant Atty. Carol Mark Affidavit in Opposition Dated December 29, 2003,Ref. Court of Appeal & Appellate Div. Appendix Vol. 2 P. 711-764; 755-764)

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[3] Such Response by Respondent show full awareness of Repayment Agreement in effect-which at this point is avoiding at all cost like the plague.

Respondent's Reinstatement Quotes rendered July 22, 2003 & August 13,2003 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2 P.686-690).

Respondent Reinstatement Quotes requesting Petitioner doubly pay Increment Amt. 651.00+2541.00 regular Mortgage payments already rendered $3191.00/$3200.00 which should have been by Repayment Agreement 590.00+2541.00 totaling $3131.00 W/Overchg $60.00. None of these Reinstatement Quotes for arrears demand payments represent existing Repayment Agreement. Conflicting July 22, 2003 requesting $10,183,84 for(4)arrears payments 2540.91 x4 one(1)late charge of 660.66 (extortive & outrageous)as due & August 13,2003 arrears of 12,704.80 for (5) arrear payments(2540.96 x 5) Late charges of 711.48 (extortive & outrageous).

Therefore if Plaintiff was not acknowledging such agreement the mortgage was overpaid up to July, 2003. Respondent 's Monthly Statement 11/16/02 for late Fee charges (Ref. Court of Appeal & Appellate Div.Appendix Vol. 2 P. 691). Petitioner never owed late fees. All payments rendered to Respondent on any mortgage payment deemed late included a late fee charge of $52.00/53.00.

Section 6 of RESPA (12 U.S.C.2606) Consumer rights Violation. Written request July 23, 2003 by Petitioner's Attorney Carol Marks request for Loan History to Respondent's employee Rolando Ragaas. [4] (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 P.678-679).

Consumer Protection

[4] In regards to Judge Jamieson statement Plaintiff provided no information of accounting received or evidence to dispute Petitioner payments such as a Loan History Mortgage acct. 556949-6. This is a document that should be readily available upon request and would have helped validate Respondents false allegations and case.

Cite: Hussey –Head v. World Sav. & Loan Ass'n, 4. Cal. Rptr. 3d. 171 (Ct. App. 2003).California Consumer Credit Reporting Agencies Act, Cal. Civ. Code §§ 1785.1 et. Seq.

What was Rendered: (Ref. Court of Appeal & Appellate Div. Appendix Vol.2.P.668) Option One Lexi Leland authorized Associate Ref. #51170 investor ID 666 July 30, 2003 was Verification of Mortgage next payment due 4/1/03.[5]

Efforts to Achieve Voluntary Compliance: -42 U.S.C. § 2000d-1. See Alabama NAACP State Conference of Branches v. Wallace, 269 F. Supp. 346 , 351 (M.D. Ala. 1967.

Petitioner's Numerous further Complaint Letters to other government agencies of Petitioner's confusion to no avail in this matter and renderance of documents to plaintiff to rectify this mater that their was an error being made

[5] Should have been July 2003 payment.

requesting a response from Plaintiff regarding their justification.

(Ref. Court of Appeal & Appellate Div. Appendix Vol. 2. P. 718-723; P.724-729 P 792-811).

September 29, 2003 NYS Banking Department (Ref. Court of Appeals & Appellate Div. Appendix Vol.2.P-792-811).

(Ref. Court of Appeals & Appellate Div. Appendix Vol.2.P-796-799) Atty General's Office, Shannon C. Hitt, Mediator File # CFA03A06396,(Ref. Court of Appeals & Appellate Div. Appendix Vol.2.P-800,808,811) WSR03N01563 Respondent's response was the same as of August 22, 2003 to NYS Banking.

PLAINTIFF's CLAIMED RESEARCHING of the matter and issues raised by Petitioner.

Option One Mortgage (Ref. Appendix Vol.2 P.698-699) dated: August 5, 2003, October 7, 2003, stated they were in the process of researching Appellant-Defendant's

issues, complaints raised and a response would be forthcoming shortly.

Even after issues raised by Appellant to all these Government Agencies regarding supposed Repayment Agreement and Plaintiff's claimed investigation into this matter.

None of this researched information was enlighten further back to the Westchester County Supreme Court Hon. Linda S. Jamieson, Presiding as an "error" or "new found" evidence to support Plaintiff's filing of July 17, 2003 nor retrieval of the Oct.2002, November, 2002 December 2002 and any of the payments made.

Petitioner had given Plaintiff the opportunity to rectify the errors and mistakes made here.

Plaintiff's Atty Greq Tabakin forges on Dated December 19, 2003 Request for Order Granting Summary Judgment for Referee to Compute and the court for an order striking Defendant's Answer.

Petitioner's Atty. Carol Marks Filed Affidavit in Opposition Dated December 31,2003 (Ref . Court of Appeal & Appellate Div. Vol2. P.711-764) received in Westchester County Clerks Office January 5, 2004.

Plaintiff's Attorney's defense documentation was solely based on: Affidavit of Farah Torres-Carr, Foreclosure Specialist (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2.P. 700—710).

> "A sworned & subscribed statement dated November 6, 2003 by Farah Torres-Carr, Foreclosure Specialist of Wells Fargo Bank and notarized by Imelda Barragan Comm.#1335914, Orange County, California

Which stated:

> "The simple fact is that the answering Appellant-Defendant(Bernice Perez) for reasons unknown to your deponent, defaulted on paying the monthly payments due *October 1, 2002 and thereafter".*

(Deceptive, Extortive Allegation)

Plaintiff own concealment, acknowledgment to honor the existence of this Repayment Agreement by Summons & Verified Complaint (Under Penalty of Perjury) in Westchester County Court (Ref. Appendix Vol.2.P.599-606) the overpayment charges of increments amounts 651.00 x4 =$2604.00 then would have made the regular monthly mortgage (2540.91) not in arrears but over paid up to July, 2003.

The true increments amount by Repayment Agreement of 590.53+2540.91.

Thus, Foreclosure could not and should not have been started.

Therefore, the blatant attempt was being made by plaintiff to extort unwarranted payments with the concealment of this Repayment Agreement, the rendered Reinstatement quotes and payments already received.

Farah Torres-Carr, Foreclosure Specialist of Wells Fargo Bank further states:

"A notice of default was mailed to defendant(Perez) least 30 days prior to the acceleration of the loan, sent in the manner set forth in paragraph "14" of the Mortgage and containing all information required.

When was Petitioner declared in default on Mortgage up to Summon & Complaint filing July 13, 2003 and 30 Day notification rendered?

Notice of Intent Foreclose under the Fair Foreclosure Act Section 1303 RPAPL; Fair Housing Act, 42 U.S.C. §3601 et seq. Fair Housing Act15 U.S.C.§1691 et.Seq.

NO Legal, official NOI required under the Fair Foreclosure Act which is a necessity and Proof required by Section 1303 (RPAPL) of the Real Property Actions and proceedings Law was given to Petitioner (Perez)) 30 Days prior to the time that the summons and complaint was served July 17, 2003 Index

#11365/03, on colored paper other than the color of the summons and complaint or otherwise.

The Court must decide whether Respondent's inability to demonstrate such compliance with the NOI provision of the Fair Foreclosure Act requires the dismissal of Plaintiff's complaint.

Postal Service certified mail receipt indicating that Respondent sent the NOI via certified mail to Petitioner.

a. Postal Service returns receipt verifying that the Petitioner received the NOI; A certification of mailing signed by the bank employee who mailed the NOI.

What was rendered by Plaintiff by Wells Fargo to Defendant (Perez) prior to Summons & Complaint was Option One Mortgage contradictory letter Dated June 30,2003 (Ref. Appendix Vol.2.P.610) re: supposed executed January 21, 2003 Repayment Agreement (Ref. Appendix

Vol.2. P.599-606) six(6) months after receiving $3200/$3250.00 per month on said mortgage.

This June 30, 2003 letter required the retainment of Appellant-Defendant's 1st Attorney Carol Marks and the remittance of my June 2003 mortgage payment by such attorney (Ref. Appendix Vol.2. P. 667).
Option One Mortgage stating in this letter of June 30, 2003 :

> "If the initial deposit (this amount $7086.00 clearly stated as being at Option One mortgage on supposed Repayment Agreement)was received without the signed Repayment Agreement, (ONLY) funds would be returned with a separate letter".

(Ref. Appendix Vol.2.P.598) December 24, 2002 Letter re: options to Appellant.
(Ref. Appendix Vol.2.P.599-609 Agreement & Mailing receipt & Repayment Agreement).

None of these payments made of 3200.00/3250.00 remitted to Plaintiff under this Agreement from February 2003, to May 2003 with an added increment amount of $651.00 instead of true increment amount of $590.93 to regular monthly mortgage payment of $2540.91 totaling $3191.00 by such Repayment Agreement was returned to me.

In such letter Plaintiff did not declare me in default for May 2003 or June 2003 payment (Deceptive) on the Mortgage Note but declaring *(only)* Plaintiff never received the initial Deposit of$7086.00 and signed Repayment Agreement.

Option One Mortgage's own admission

> "Therefore, declaring such Agreement Null and Void and Withdrawn. "Option One Mortgage Corporation is proceeding with the foreclosure action at such time."

Farah Torres-Carr, Foreclosure Specialist of Wells Fargo Bank further states:

> "However, Defendant (Perez) failed to timely cure the default, Plaintiff accelerated the debt and commenced the present action on July 17, 2003.

FALSE: (Ref.Appendix.Vol.2.P.598 Plaintiff's December, 2002 Letter); sent prior to the establishment of supposed Repayment Agreement.(Ref.Appendix.Vol.2.P.599-609)

REPAYMENT AGREEMENT Appellant-Defendant Atty. Carol Mark Affidavit in Opposition Dated December 29, 2003, [6](Ref. Court of Appeal & Appellate Div. Appendix Vol. 2 P. 711-764;)

Fraud In The Inducement: See 255 N.Y.S. 2d 608,610; See 174 N.E. 2d 304, 308, 310 F. 2d. 262, 267; 234 F. Supp. 202,

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[6] Petitioner not Plaintiff Renderance of the supposed Repayment Agreement as evidence to the Court.

203; Breach of Legal Duty 38 Cal.Rpte.148, 157; 425 P. 2d 974. 978 Model Penal Code§224.

ESTABLISHED JANUARY 21, 2003: (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2 P.; 755-764) Faxed to me January 17, 2003 and forced to be signed and remitted back by January 21,2003 under the threat of immediate foreclosure. By the dates of renderance of payments to which plaintiff claimed did not have there was no need for the forced establishment of a Repayment Agreement to be signed January 21, 2003 since Plaintiff already had Payments October,2002 November,2002 December 2002.

December 2002's payment was about to be rendered I received call from Plaintiff's employee Mr.Vincent Calderone 1(888)355-7305 Ext.38067 informing me their system did not have the monthly mortgage payments due for October, November, December, 2002.

Payments totaling $7068.00 (Ref. Appendix Vol.2.P.791 Western Union Verification) were remitted to Plaintiff by Western Union Quick Collect: October, 2002 originally remitted MTCN#658-515-1246 12/23/02 $2691.00 which was declined by plaintiff and returned 01/02/03. Resent 01/06/2003 MTCN 658-540-2421; November,2002 remitted December 27,2002 $2600.00; MTCN 658-059-9464.For December, 2002 MTCN658-553-4852 . Mr. Calderone informed to send only $1795.00. All payments of 3200/3250 were remitted to Plaintiff under this Repayment Agreement up to May 2003 and the receipt of Plaintiff 's June 30, 2003 letter. Only payment due at this time would have been June 2003 payment under Repayment Agreement which is being concealed by Plaintiff (Ref. Appendix.Vol.2.P.611-666 Summons & Verified Complaint- (Under Penalty of Perjury).

Farah Torres-Carr, Foreclosure Specialist of Wells Fargo Bank further states:

> "Defendant(Perez) cannot show proof of sufficient tender to defeat Plaintiff's right to have accelerated the loan and to recover the sums due through foreclosure".

Petitioners Payment Receipts W/ Breakdown of payments (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2 P. 607-609; 731-754) rendered to the Court.

RETURN OFPETITIONER'S JUNE 2003 PAYMENT

On around January 5, 2004 prior to Judge Jamieson's Decision of March 22, 2004 the true return of June's 2003's payment miraculously appeared in my mailbox even though Plaintiff's Attorney Greg Tabakin claimed it's return August 12, 2003; I immediately took it to my Attorney Carol Marks Office.

> (Ref. Appendix Vol.1.P.285) Return of June's 2003 payment Deposit Receipts).

Legal Standing: March 12, 2004 re now New Assignment. [7]

Mortgage Assignment control #440340539 alleged recorded 03/12/04 Certified 12/03/08 Westchester County Land $ Records Office, Rm.345[8] (Ref. Court of Appeal & Appellate Div. Appendix Vol.2.P.592-595).

Respondent, WELLS FARGO BANK MINNESOTA

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[7] Plaintiff originally stood before this court on July13, 2003 by Summons & Complaint, Under the Penalty of Perjury and Verified complaint (Ref .Vol. 2. #13 P. 615 "to be assigned"), "That Plaintiff is now the sole , true and lawful owner of the said bond(s) Note(s) and mortgage(s) securing the same and there have been no prior proceedings at law or otherwise, to collect or enforce said bond(s)note(s) and Mortgage (s) and none are currently Pending. This assignment now claimed Option One transfer Mortgage to Plaintiff.

[8] There is no Note Amount of $292, 000 on this Assignment. Nor does it state (MTGB) Mortgage Assignment. Therefore in what capacity is Wells Fargo on said Mortgage.

There is no valid record of an Assignment of Mortgage from the Original mortgagee FIRST ALTERNATIVE MORTGAGE Control No. 420582426 to the plaintiff WELLS FARGO BANK MINNESOTA.

On March 2, 2003 an alleged assignment was recorded with the Westchester County Clerk. However, although the document is notarized, there is neither signing date nor effective date on the actual assignment Control No 430870131.

There is no way to know when this alleged assignment became effective, if at all.

Further, there is a portion of the alleged assignment that states that the original mortgage was executed on December 28, 2001 and was recorded with the Westchester County Clerk's office March 8, 2002, there is,

a notary public who notarized this assignment December28th of 2001. [9]

How could a document that was notarized on December 28th in 2001, be able to attest to the fact that the original mortgage would be registered with the Westchester County Clerk on March 8th of 2002?

That would appear to be either fraudulent or grossly inaccurate, either rendering the document ineffective or unrecordable.

On March 12, 2004, almost a year after the commencement of this action, another alleged assignment was registered with the Westchester County Clerk's office. Assignment Control No 440340539.

The first problem with this alleged assignment is that. Because the first alleged assignment is suspect, any assignment thereafter is invalid.

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[9] This was Petitioners Closing Date and I was told Option One Mortgage would be the Servicer of the Mortgage.

In the first alleged assignment FIRST ALTERNATIVE MORTGAGE CORP. allegedly assigned the mortgage to OPTION ONE MORTGAGE CORP and in the second assignment OPTION ONE MORTGAGE CORP.[10] attempts to reassign that mortgage to WELLS FARGO. If the assignment to OPTION ONE MORTGAGE CORP is suspect then we would argue that they cannot convey the mortgage to another party, thus the second assignment would be rendered invalid as well.

Notwithstanding the above, if WELLS FARGO BANK MINNESOTA, did, in fact, have standing to sue under the first assignment as they allege, why would they need to re-assign the mortgage in the midst of the lawsuit? The second attempted reassignment only gives further strength to our arguments that Plaintiff was not only

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[10] Servicer of Mortgage from First Alternative Mortgage Servicing #331005398 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2. P. 587-591.

without standing to sue, but that the Plaintiff's assignment practices are highly suspect, invalid and potentially fraudulent.

WELLS FARGO BANK MINNESOTA failed to produce the assignment of mortgage ownership documentation as of the commencement of this action and still has not produced an assignment of mortgage proving ownership. Accordingly, Plaintiff clearly didnot have an ownership interest in the subject mortgage at the time of filing.

The subject note and Mortgage pursuant to an assignment made by a nominee (Option One Mortgage) of the original Lender First Alternative Mortgage dated: IS QUESTIONABLE [11]

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[11] Ref. Jan riley Order to Show Cause (Ref. Court of Appeals & Appellate Div. Appendix Vol.2. P. 477-525).

Decision & Order March 22, 2004 (Ref. Appellate Div. & Court of Appeal Appendix Vol.2. P.765 -767).

Appendix B.

At on IAS, Part of the
Supreme Court of the State of New York,
County of Westchester, on the 19th day of
March 2004,

PRESENT: Hon. Linda S. Jamieson
SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF WESTCHESTER
OPNY520

Wells Fargo Bank, Minnesota, National Associations, As Trustee for Registered Holders
of Option One Mortgage Loan Trust 2002_A
Asset-Backed Certificates, Series 2002-A, WITHOUT RECOURSE

Plaintiff

V

Bernice Perez Defendant

The following papers numbered 1 to 3 were read on this motion for a summary judgment in a foreclosure action and the appointment of a referee to compute:

Notice of Motion and papers in support: 1

Proposed Order: 2

Affidavit and Papers in Opposition: 3

Upon the foregoing papers filed herein, it is ordered that this motion is disposed of as follows: Motion Denied.

The defendant (Perez) in this matter, has opposed the instant motion for summary judgment. Defendant has offered evidence of payments made on the loan in question through June of 2003 even though the Plaintiff (Wells Fargo/Option One Mortgage) contends that the defendant has been in default and made no payments since October 1 2002.

Plaintiff's papers have provided no information or accounting of payments received nor any evidence to dispute the defendant's claimed payments.

Given this factual dispute, the court is not even able to determine if the Plaintiff was justified in seeking to hold the defendant in default in July 2003 (when the instant action was commenced). Accordingly, Plaintiff's motion is denied and it is;

ORDERED: That Counsel for the parties shall appear on April 15, 2004 at 9:30 AM before this Court on Room 1802 for a preliminary/status conference to schedule discovery, either party may bring a summary judgment action if they deem it appropriate to do so.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
March 19, 2004

"s/"

Hon. Linda S. Jamieson
Justice of the Supreme Court

TO: Fein, Such & Crane, LLP
747 Chestnut Ridge Road, Suite 200
Chestnut Ridge, New York 10977-6216
Ross & Mark, LLP
Attorneys for Defendant
559 Gramatan Avenue
Mount Vernon, New York 10552

Greg Tabakin's Plaintiff's Attorney question to Petitioner after the renderance of this March 22, 2004's Decision

"If there really was a Repayment Agreement".

Petitioner's Response: I don't know at this point I'm totally confused ask your client.'

However, I had previously tried to rendered such info to him to bring about a resolution as there was and error and he told me he could not speak to me and all matter had to be handled in Court.

My dumbness and naiveness I had sent him my Complaint letter anyway in hopes of bringing about a resolution to which I really thought Respondent had made an error. To which now I realize Respondent Wells Fargo /Option One Mortgage was well aware of their Intent actions all along. (Ref Court of Appeal & Appellate Appendix Vol P. 718-729)

The matter was scheduled again for Conference before the Honorable Linda S. Jamieson Counsel for the parties appeared on April 15, 2004 at 9:30 AM before this Court in Room 1802 for a Preliminary/status conference to schedule discovery.

Plaintiff immediately now asked for Reconciliation on said mortgage with inability to defeat Appellant-Defendant valid payment receipt W/ Breakdown of payments (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2 P. 607-609; 731-754) which defeated their false allegations and claim by Summons & Complaint of July 17, 2003 and further allegations by Respondent's Atty Greq Tabakin Request for Order Granting Summary Judgment

W/Affidavit of Farah Torres-Carr, Foreclosure Specialist Dated November 6, 2003 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2.P. 700—

710). (Extortive) Alleging Petitioner made no payments since October 1, 2002.

Now with a mistrust issue regarding Respondent, I requested to be allowed to Refinance; Judge Linda S. Jamieson stated: "I be allowed to do".

What happened next should not be in dispute as petitioner made the court aware every step of the way through documentation as to what was transpiring between Plaintiff/attorney and Petitioner's Attorney .

Appendix C

Decision & Order April 12, 2005 (Ref Appellate Div. & Court of Appeal Appendix Vol4. P. 1339-1342).

At on IAS, Part of the

Supreme Court of the

State of New York,

County of Westchester, on the

12 day of April 2005,

PRESENT: Hon. Linda S. Jamieson
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
OPNY520

Wells Fargo Bank, Minnesota, National Associations, As Trustee for Registered Holders of Option One Mortgage Loan Trust 2002_A Asset-Backed Certificates, Series 2002-A, WITHOUT RECOURSE

Plaintiff

V

Defendant Bernice Perez

The following papers numbered 1 to 2 were read on this motion to renew and for summary judgment:

PAPERS:

Notice of Motion, Affirmation in Support and

Exhibits: 1

Affirmation in Opposition: 2

The motion is decided as follows: the motion to renew is GRANTED; the motion for summary judgment is DENIED.

This action arises from an attempt to foreclose on Defendant's mortgage. After initially defaulting on her mortgage, the mortgage company, Option One Mortgage Corporation the ('mortgage company") and defendant worked out a repayment plan which provided for certain increased monthly payments until the mortgage was reinstated. It also contained a provision that the payment due dates were mandatory and no grace period would apply.

The parties agree that Defendant's May, 2003 payment was made until June, 2003.

Despite the language in the repayment plan, the mortgage company accepted the May payment and credited it to Defendant's account.

What happened next is in dispute. Although the dates are illegible on the copies provided to the court, and no proof of mailing is annexed, Defendant claims that her attorney[1] *judge footnote* mailed four (4) money Orders to the mortgage company in payment of her June mortgage obligations[12].

The copies of the money orders provided to the Court are difficult to read. Three of the four, however, are stamped "VOID" and there is additional illegible handwriting on the face of the money orders. What happened to these money orders cannot be determined from the papers submitted. The mortgage company claimed it never received a payment for June, while Defendant claims the mortgage company informed her counsel,

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[12] In ref Judge Footnote [1] "Not Defendant's Attorney of record in this case". Carol Marks was Attorney of Record on Summons & Complaint (ONLY). No None Malicious Prosecutorial Misconduct. Mutual Parting "stated not equipped to handle further Litigation. The Attorney of record thereafter was Attorney Harry Stokes.

that it had returned the checks to Defendant, yet she claimed not to have received them.

Given the existence of at least this question of fact, the motion for summary judgment must be denied.

Despite having counsel of record, Defendant, seemingly pro se, has submitted numerous papers to this court in connection with this motion. They are not properly notarized and there is no indication they were ever served on Plaintiff's counsel. It is not even clear whether Defendant's own counsel has reviewed them. Because of these irregularities, the Court did not consider the information except to the extent it was duplicative of information and documents properly submitted to the Court.

Counsel for the parties is directed to appear for a conference in room 1802 at the courthouse, 111 Dr. Martin Luther King., White Plains, New York 10601, on May 3, 2005 at 9: 30 a.m.

Even if Defendant's counsel of record intends to discontinue his representation of Defendant, he is to appear on the above date, unless a motion to withdraw as counsel has been granted prior there to. If Defendant is proceeding pro se, she must personally appear for the conference.

The foregoing constitutes the decision and order of the Court.

"s/".

Hon. Linda S. Jamieson
Justice of the Supreme Court

Dated: White Plains, New York
April 12, 2005

To: Mikelle V. Komor, Esq.
Fein, Such & Crane, LLP
747 Chestnut Ridge Road, Suite 200
Chestnut Ridge, New York 10977-6216

Harry Stokes, Esq. 49 Raemont Road
Granite Springs, New York 10527

April 17, 2004 (with Credit Guard on my Credit File) I received notification a change to my Credit Files (Ref. Appendix Vol.3.P.1020-1021)to which Plaintiff False Insertion and Tampering with Appellant-Perez Credit Files reinsertion of Foreclosure proceedings started as of April 17, 2004 verified and updated April 17 2004 to limit me to any type of Refinance.(Vindictive).

At this time I was trying to Refinance said property through Southern Star Mortgage. Mr. Ralston Calder's many request for Pay-off letter was submitted to Plaintiff. (Ref. Appendix Vol 2. P.768-774) Plaintiff's payoffs rendered far exceed LTV value whereby blocking any type of Refinancing.

Equal Credit Opportunity Act U.S.C §1981 et seq.

Reporting Act: §602. Consumer Protection

A Consumers Credit files should reflect correctness on an on-going basis.

Hussey –Head v. World Sav. & Loan Ass'n, 4. Cal. Rptr. 3d. 171 (Ct. App. 2003).

California Consumer Credit Reporting Agencies Act, Cal. Civ. Code §§ 1785.1 et. Seq. (Respondent–Wells Fargo) was furnishing false, conflicting, negative information about Petitioner's Credit History to credit reporting Agencies.

The act prohibits the furnishing of incomplete or inaccurate information to credit agencies and provides that consumers must be notified when negative credit information is submitted.

Petitioner's first Credit Report received CDI-Info1, The hidden Credit file that most Consumers do not know about but greatly affect your Credit on major Purchases (House, Car) etc. July 8, 2003 by a Real Estate Broker(Ref. Court of Appeal & Appellate Div. Appendix Vol.3.P.1012) stated Defendant's last Payment by Respondent as January, 2003 entered date, method of

reporting such information inserted June 2003 prior to Plaintiff's Summons & Complaint of July 13, 2003. False:

As such, this was a triable issues of material fact regarding Respondent–Wells Fargo procedures for disseminating this information .

FURTHER CONTRADICTION INSERTION TO CREDIT FILES BY PLAINTIFF

Fair Credit Reporting Act: §602. Congressional Findings and statement of purpose {15 U.S.C. §1681](a) Accuracy and fairness of Credit reporting. The Congress makes the following findings: (1)(2) (3) (4) the banking system is dependent upon fair and accurate credit reporting.

Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued function of the banking system.

§603{15 U.S.C. § 1681] (h)(2) (6) Adverse Action to the interests of the consumer.

§617 Civil liability non compliance {15 U.S.C. § 1681c] In the case of (A) §623. Responsibilities of furnisher of information to consumer Reporting agencies enforcement{15 U.S.C. § 1681 2](1)(A)(B(i)(ii)(C)(2)Duty to correct and update information: A person who(A)(B)(3) Duty of Furnishers of information upon notice of dispute: (1) (A)(B) (C)(D).

Petitioner's many complaints, disputes to the Credit Bureaus was made by Petitioners (at a Cost) to try to clear Plaintiffs Erroneous conflicting discrepancies of payments that was made by Appellant's(Perez) to Credit Files which was, prohibiting any type of Refinance.

> A Response was required from Plaintiff. Wells Fargo Option One had 30 days to respond, correct any discrepancies to which they refused to do so and did not".

The "Pay as Agreed" with last payment made June 2003 insertions is correct and true; which conflicts with Plaintiffs Summons and Complaint Filing, etc; (Ref. Appendix Vol.3.P.1012-1038 Credit Files).

EQUIFAX:

File #3363013764,3363010885, December 6, 2003 received EQUIFAX January 27, 2004 STATES "Pay as Agreed" last payment made June 2003(TRUE)in Westchester County Court Plaintiff alleges Appellant-Defendant made no payments since October 1,2002 and thereafter. (Ref. Appendix Vol.2.P 781A)

EXPERIAN:

OPTION ONE VERIFICATION EXHIBIT #8 CREDIT BUREAUS, April 21, 2004 File# 0481981800 Foreclosure proceedings started verified and updated April, 2004. Appellant-Defendant did not owe payments for:

1/2003, 2/2003, 3/2003,4/2003,5/2003,6/2003. Defendant 's Social Security # incorrect. (Ref. Appendix Vol.2.P 781B) which I repeatedly ask them to correct.

EQUIFAX CREDIT BUREAUS

OPTION ONE VERIFICATION EXHIBIT #9

April 26, 2004 "reported in foreclosure from January, 2003. (FALSE)Summons & Complaint not started until July 17, 2003.

EXPERIAN ;

File #0617602354 May 24,2004 File # 0481981800

I did not owe payments for

1/2003,2/2003,3/2003,4/2003,5/2003,6/2003 BY SUCH CREDIT FILES.

TRANS UNION CREDIT BUREAUS

OPTION ONE VERIFICATION EXHIBIT #10

(Ref. Court of Appeal & Appellate Div. Appendix Vol.2.P 781C).

THEREFORE: Defendant filed another complaint April 29, 2004 with: NYS 2nd Complaint # 04 M 987 May 11, 2004 June 8, 2004 (Ref. Court of Appeal & Appellate Div. Appendix 2. P. 775-790).

This Loan History document should be readily available to all homeowner's upon request and not at Plaintiff's discretion or forced by anyone in fair business practices.

"My many attempts at Refinancing cannot be done due to my Credit Files to which Plaintiff know".

Respondent Attorney now asks that the court grant its application for a Motion to Renew Granting Summary Judgment and a referee to computee based on a Defaulted June Payment.

Spoliation litigation evidence See 166 N.J. 391. Mikelle V, Komor Respondent Attorney cannot forcibly declare a default based on rendering a defaced motion to hide pertinent evidence re: Repayment Agreement and tampering with Petitioner's June 2003's payment (Ref. Court of Appeal & Appellate Div. Appendix Vol.4.P.1421) in question by inserting Void to create a controversy to obtain Summary Judgment.

No other payment in The Casebook File can be found to justify this allegation and the entertainment for Judge Linda S. Jamieson to have consider in Decision & Order (Ref. Court of Appeal

& Appellate Div. Appendix Vol. P 1339-1342) as an issue. Not there March 22, 2004 Decision and Order.

Further such payment was not marked VOID upon mailing by Petitioner 's Attorney Carol Mark (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P.667).

Not marked VOID when returned by: Respondent's Attorney Greq Tabakin Claimed Return of June 2003 payment, Dated August 12, 2003 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P.692-694).

Payment never returned backed to the Court after received by Petitioner which immediately was taken to Petitioner's Attorney Carol Marks Office.

Atty. Mikelle V. Komor Request: September 30, 2004 : Motion to Renew to be heard October 13, 2004(Ref. Court of Appeal & Appellate Div. Appendix Vol.2&3 P.813-939).

PLAINTIFF IS ENTITLED TO RENEWAL OF THE MOTION FOR SUMMARY JUDGMENT CPLR

2221(e) provides that: A motion for leave to renew: shall be identified specifically as such; based on new facts not offered on prior motion that would change the prior determination or shall demonstrate there has been a change in the law that would change The prior determination: and shall contain reasonable justification for the failure to present such fact on the prior motion.

Misrepresentation/Concealment Model Penal Code §224 .Fraud Fact/ Actual Fraud: Fraudulent & Negligent Misrepresentation: Deliberate withholding of information which Wells Fargo/Option One Mortgage had a duty to disclose Fraudulent Concealment/Spoilage; 166 N.J. 391.Active Concealment: 236 N.E. 2d 63,70. Fraud Fact/ Actual Fraud: Deceit; Concealment 144 A. 2d 836, 838.

Wells Fargo/Option One Mortgage duly, legally bound under Penalty of Perjury filing Westchester County Supreme was not based on a default payment under a supposed established Repayment Agreement supposedly

executed January 21, 2003 nor admittance of it's existence which Respondent was receiving payments ($3200/3250) from February 2003 until May 2003[13].

Actual Fraud/Fraud In Fact, Fraud upon the Court via: misrepresentation concealment. Fraud in the Factum ; 5 S.E. 2d. 138, 141

Petitioner Argument: Petitioner's June 2003 Payment.

a. The real issue that needs to be validated, clarified by Plaintiff What was the motive and justification for such claimed return of this

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[13] June 2003 remitted by Petitioner's 1st Atty. Carol Marks upon retainment July 29, 2003. Respondent's Attorney Greg Tabakin's claimed return August 12, 2003 of such payment that Petitioner is now being declared in default for.

June 2003's payment returned by

Respondent's Atty. Greg Tabakin after

b. Petitioner's Atty. Carol Marks Mailing that's being declared as a default .

c. What was Respondent reasonable justification for not bringing forth on Summons & Complaint to which Respondent had full awareness of by NYS Banking Response of this Repayment Agreement.

d. When was a default declared to Petitioner after the establishment of Repayment Agreement to which Petitioner was abiding by?

PETITIONER ARGUMENT & REASON:

acknowledgment of such Agreement in effect" July 13, 2003 would have voided Respondent any grounds to have commence such proceeding via Summons Complaint.

Therefore: Instead Plaintiff used the False allegation by Affidavit Farah Torres Carr that

Petitioner had not made any payments since October 1, 2002.

Petitioner's Attorney Harry Stokes Supplemental Affirmation in Opposition to Respondent's Notice of Motion to Renew October 15, 2004 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 3. P. 944-953).

Respondent's Attorney Mikelle V. Komor, Reply Affirmation to Petitioner's Attorney Harry Stokes Supplemental Affirmation in Opposition to Notice of Motion To Renew October 28, 2004 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 &3 P.940-943).

Petitions Response:

Petitioner's Attorney Harry Stokes November 17, 2004 Request for Valid Accounting and Pay-off figure. Plaintiff's Attorney Mikelle V. Komor requested the renderance of Petitioner's Credit Files to verify the discrepancies.(Ref. Court of Appeal & Appellate Div. Appendix Vol. 3. 961).

December 8, 2004 Status Conference.

I 'm unaware as to what transpired in the chambers of Judge Jamieson as I was asked to sit in the conference room.

UP FOR DISCUSSION: Petitioner's Credit Files after response from NY Banking 2nd Complaint & Forced Loan History #5569496 for Petitioner: On Loan History Respondent Wells Fargo / Option One had late fees

NY Banking 2nd Complaint04 M987 Dated May 11, 2004 Option One response June 8, 2004(Ref. Court of Appeals& Appellate Div. Appendix Vol. 2. P.775-790).

generating every week with many missing discrepancies of Petitioner's rendered payments.

However, upon the return from such meeting the demeanor of Mr. Harry Stokes was different and the attitude between Defendant client and Harry Stokes took on a different Air.

Petitioner's fwding of Credit Files to Atty. Harry Stokes for Respondent's Atty. Mikelle Komor ER

749782721 US DATED 12/10/04 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 3. 962-964).

Petitioner January 7-26, 2005 .(Ref. Court of Appeal & Appellate Div. Appendix Vol.3 P.965-984).trying to contact Attorney Harry M. Stokes, 49 Raemont Road, P.O. Box 192, Granite Springs, New York 10527-0192. Harry Stokes Now missing [14] On January 26, 2005 at

6:00 PM prior to our Court Date January 27, 2005 I finally received a call from Mr. Stokes. See(Ref. Court of Appeal & Appellate Div. Appendix Vol.4 1322-1338).

DISCIPLINARY RULE 1-102 200.3] Malicious Prosecutorial Misconduct, Ineffective and inadequate Counsel.

Petitioner is not guilty of Libel or Slander and can truthfully and honestly face anyone of my accused in any court of Law to all my defenses.

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[14] Disciplinary rule 1-102 200.3] Malicious Prosecutorial Misconduct, Ineffective and inadequate Counsel.

A lawyer or Law Firm shall not: Violate a Disciplinary Rule; Circumvent a Disciplinary Rule through actions of another; Engage in conduct in illegal conduct involving dishonesty, Fraud, deceit, or misrepresentation; Engage in conduct that is prejudicial to the administration of justice.

Respondent's Attorneys Fein, Such, Kahn, Sheperd should be fully investigated for their Procedural and Judicial tactics, practices and behavior and interfering with Defendant's Attorneys.

A lawyer should be temperate and dignified, and should refrain from all illegal and morally reprehensible conduct.

The lawyer's position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplies respect for law:

JANUARY 27, 2005 Court Hearing: still up for discussion was Petitioner's Credit Files after response from NYS 2nd Complaint # 04 M 987 May 11, 2004 June 8,

2004 (Ref. Court of Appeal & Appellate Div. Appendix 2. P. 775-790) & Forced Loan History: On Loan History Respondent's late fees generating every week on History and many missing discrepancies of Petitioner's rendered payments and missing Payments.

Respondent' s Attorney Mikelle V. Komor should not have been allowed to Renew such Motion by Judge Linda S. Jamieson without Attorney of Record Harry Stokes Missing in Action by misconduct and not in attendance. Matter should have been postponed.

Respondent's Attorney Mikelle V. Komor informed the court Judge Jamieson upon the mysterious absence of Petitioner's Attorney Harry Stokes there was no discrepancies in Petitioners Credit file which was False and there was no outstanding Issue.[15]

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[15] Respondent' Attorney knew Mr. Stokes would not be in Court and thought he had convinced Petitioner not to attend which would have cause a default for Petitioner. CRITICAL

Now Petitioner must stand for self with mysterious disappearance of Petitioner's Atty Harry Stokes – Plaintiff's Attorney Mikelle Reply affirmation March 7, 2005 (Ref. Court of Appeals & Appellate Divi. Appendix Vol.4. P. 1290-1293).

Petitioner's Response Affirmation Sent: ED 545083556 US to Harry Stokes March 12, 2005 (Ref. Court of Appeals & Appellate div. Appendix Vol.4. P. 1294-1338) to Plaintiff's Attorney Mikelle Reply affirmation March 7, 2005.

IMPORTANT NOTE: Plaintiff's Mikelle Komor rendered this disorganized distorted Motion to Renew (Ref. Court of Appeal & Appellate Div. Appendix Vol.2&3 P.813-939). (not Defendant) as referenced in Judge Linda S. Jamieson's Decision of April 12, 2005. Defendant have never rendered any illegible documentation to this court or any court in this matter.

Dated March 10, 2005 received County Clerk's Office & Judge Jamieson's Part March 15, 2005.

Petitioner's Response Affirmation Sent ED 545083410 US to Mikelle V. Komor March 12, 2005 (ref. Court of Appeals & Appellate Divi. Appendix Vol.4. P. 1294-1338).

Mikelle V. Komor Assertions # 2: March 7, 2005 to the Petitioner's opposition to Plaintiff's application to renew the prior motion for Summary Judgment.

Mikelle V. Komor Assertions #3- "Defendant's argument that the bringing of the instant motion to renew is premature is without merit. While it is true a decision on the September 2004 motion to renew was not rendered, at the last appearance in this matter on January 27, 2005, counsel for the plaintiff was instructed by the Court to

Refile the motion to renew and has done so according to the Court's direction".[16]

Mikelle V. Komor Assertions#4 Plaintiff EXHIBIT 2

"Defendant 's argument that the information annexed to the initial motion to renew is also without merit. At the time of the filing of the initial motion for summary judgment , Defendant Perez had not yet filed her complaint with the Department of Banking, which explained in far greater detail than the Answer Defendant's alleged defenses to the foreclosure action.[17]

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[16] Plaintiff not Instructed but requested upon the mysterious absence of Attorney Harry Stokes that the court grant such motion.

[17] Respondent was made aware by NYS Banking Complaint 03 M 1874 July 30, 2003 received by Banking Aug 1, 2003 ; all other complaints to government agencies (Ref. Court of Appeal & Appellate Div. Appendix Vol.2, P. 718-729); all evidence put before Respondents re; the discrepancies in filing to which Plaintiff claimed researching and never rendered and answer as to New found evidence or error in filing (Ref.

(Ref. Court of Appeal & Appellate Div. Vol.2. P 813-939).

(Ref. Court of Appeal & Appellate Div. Vol.2. P-902)

NYS Banking to Plaintiff NY Banking 2nd Complaint 04 M 987 Dated May 11, 2004 Option One response June 8, 2004(Ref. Court of Appeals& Appellate Div. Appendix Vol. 2. P.775-790).:" Kindly have a member of your staff investigate this matter and within 30 days resolve the outstanding issues directly with the complainant. Provide us with a copy of your final letter to the complainant outlining your findings, decision or resolutions reached and enclose copies of all pertinent documents and disclosure statements which support your response.

The Department of Banking complaint was made after the decision on the motion for Summary Judgment was rendered, thereby making it impossible to include the

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Court of Appeal & Appellate Div. Appendix Vol. 2.P. 698-699); Judge Jamieson 1st Order and Decision March 22, 2004 Vol. 2. P. 765-767).

complaint to the Department of Banking and Plaintiff's responses thereto in the initial motion for Summary Judgment.

It was not until this complaint was received that Plaintiff had the opportunity to conduct a more thorough investigation into the background history of this matter, which information is certainly relevant to the disposition of this matter.

All information was given to Plaintiff. Plaintiff rather wait to see what evidence Petitioner have against them and play a game say one thing in court get outside the court and do something entirely different by harassing intimidating to try to defeat and wear Petitioner down; Plus further confuse the issues, courts and Petitioner . Mikelle V. Komor Assertions#5 "Defendant is being disingenuous with the Court in now making the allegation that this information was available to Plaintiff when it is Defendant's own conduct which prevented Plaintiff from

presenting this information to the Court during the pendency of the original motion for summary judgment." Mikelle V. Komor Assertions #6 "in a thinly veiled attempt to distract the Court, Defendant alleges that there is merely a disputed issue of fact as to payments.

However, such a dispute can be sorted out upon the referee's calculations of the amount due Plaintiff, and should not prevent the granting of plaintiff's motion to renew its application for summary judgment. Moreover, fails to address the issue at the heart of this action, which is that Defendant has defaulted on her mortgage, and that she has failed to take any steps to remedy the default, despite repeated promises to both plaintiff and the Court for more than one year that she has been working on obtaining refinancing. The simple fact is that Defendant has shirked her obligation to make the payments required under the terms of the Mortgage and repayment plan.

No the "thinly veil and disingenuous attempt to distract the court" is by Respondent Wells Fargo/ Attorneys.

Petitioner filed Complaint with NYS Banking April 29, 2005 which never prevent Respondent from presenting any information to the court. Petitioner always brought forth all evidence and documents in my defense before Respondent in all aspects of this matter to all outside other Government Agencies which required a response to Respondents allegations. Plaintiff never acknowledged there was new found evidence or an error to their Filing.

Respondent's Atty. Mikelle V. Komor ask the court to strike my defenses and affirmative answers in it's entirety "February 5, 2005;" re: Petitioner rendered complaint to NYS Banking June 8, 2005 especially if it defeated Respondent 's False allegations, Ploy, and behavior.

The simple fact is the court should recognize all the obstacles Plaintiff is throwing in the way to defeat Petitioner by deceptive behavior rather than Plaintiff rendering true facts and valid sound evidence.

All issues should have been resolved which was up for discussion December 8, 2004 Status Conference and January 27, 2005.

Plaintiff's Attorney Mikelle V. Komor states Plaintiff is entitled to foreclose the mortgage under its very term.

Legal Standing: March 12, 2004 re: now New Assignment. [18] Mortgage Assignment control #440340539 alleged recorded 03/12/04 Certified 12/03/08 Westchester

County Land $ Records Office, Rm.345[19] (Ref. Court of Appeal & Appellate Div. Appendix Vol.2.P.592-595).

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[18] Plaintiff originally stood before this court on July13, 2003 by Summons & Complaint, Under the Penalty of Perjury and Verified complaint (Ref .Vol. 2. #13 P. 615 "to be assigned"), "That Plaintiff is now the sole , true and lawful owner of the said bond(s) Note(s) and mortgage(s).

Respondent, WELLS FARGO BANK MINNESOTA There is no valid record of an Assignment of Mortgage from the Original mortgagee FIRST ALTERNATIVE MORTGAGE Control No. 420582426 to the plaintiff WELLS FARGO BANK MINNESOTA.

Petitioner did not/have not defaulted on said Mortgage or Repayment Agreement and Respondent is not entitled to foreclose under its Terms.

Mikelle V. Komor Assertions #7 "While Defendant's counsel contends that Plaintiff was notified of counsel's unavailabity for the Court appearance scheduled for January 27, 2005 Plaintiff did not receive the facsimile until after the scheduled court appearance, at

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[19] On this assignment Wells Fargo now claim Option One Mortgage transferred Mortgage & Note to Plaintiff There is no Note Amount of $292,000 on this Assignment. Nor does it state (MTGB) Mortgage Assignment. Therefore, in what capacity is Wells Fargo on said Mortgage.

which time the Court had already directed Plaintiff to refile the instant motion to renew.'

Mikelle V. Komor Assertions #8

"Plaintiff acknowledge receipt of opposition to the instant motion filed by Defendant Bernice Perez. However, as Defendant is represented by counsel "

Petitioner's Atty. Harry Stokes -Who is not Present- missing in action Petitioner's filed a Opposition/Affirmation Request for Trial February 5, 2005 Credit Files re-rendered to Respondent's Atty. Mikelle V. Komor' Request Resubmit for Summary Judgment Dated January 31, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol.3 P 985-1090).

Petitioner's Opposition/ To Plaintiff's Motion to Resubmit Request for Summary Judgment Dated January 31, 2005 Sent to Atty Harry Stokes ER. 749782783 US Re; Atty Harry Stokes and our Court Hearing of January 27, 2005.

Petitioner's Opposition/ To Plaintiff's Motion to Resubmit Request for Summary Judgment Dated January 31, 2005 Sent to Mikelle V. Komor ER 749782735 US.

Petitioner's Opposition/ Affirmation Request for Trial Dated February 5 , 2005 was marked and stamped Westchester County Clerk's Office February 7, 2005.

Petitioner's Opposition/ Affirmation Request for Trial Dated February 5 , 2005 Sent ED 545083437 US Mikelle V. Komor (ref. Court of Appeals & Appellate Div. Appendix Vol.3. P. 985-1090). Dated 2/9/05

" and Defendant's counsel has submitted opposition papers herein, Plaintiff respectfully requests that the opposition papers submitted by Ms. Perez be disregarded in their entirety.

Petitioner Atty Harry Stokes re-emerge after (Ploy failed and never contacting Petitioner or even question what transpired in court on January 27, 2005) to date to file an Affirmation in Opposition, on February 24, 2005(Ref. Court of Appeal & Appellate Div. Appendix

Vol.3 P 1091-1097). "has submitted opposition papers herein, Plaintiff respectfully requests that the opposition papers submitted by Ms. Perez be disregarded in their entirety.

Harassment Of Petitioner: Atty Harry Stokes letter to Plaintiff's Atty. Mikelle V, Komor Dated March 18, 2005 Plaintiffs harassment of Petitioner. (Ref. Court of Appeal & Appellate Div. Appendix Vol. 4. 1315).

Atty. Harry Stokes Letter April 8, 2005 to Petitioner's : Request returns Case File & discharge himself as Attorney(Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P.1316-1317).

PETITIONER's CONCERN: "My disapproval and confidence in his representation is shattered".

Harry Stokes own admission in such letter of stress of what I have had to endure.

Defendant/Petitioner's request Change of Attorney from Atty. Harry Stokes and request all further

information regarding case be submitted to Defendant (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P.1319-1320).ED 545083454 US stamped received Westchester county clerk April 21, 2005.

Atty. Harry Stokes Motion to Withdraw as Counsel, May 3, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4. P. 1343-1345).

(Ref. Court of Appeal & Appellate Div. Appendix Vol. P. 1653-1654)

APPENDIX D

on IAS, Part of the Supreme Court of the State of New York, County of Westchester, on the 16 day of December , 2005

PRESENT: Hon. Linda S. Jamieson
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
OPNY520

Wells Fargo Bank, Minnesota, National Associations, As Trustee for Registered Holders of Option One Mortgage Loan Trust 2002_A Asset-Backed Certificates, Series 2002-A, WITHOUT RECOURSE

Plaintiff

V

Bernice Perez Defendant

Summary Judgment

Order & Decision December 16, 2005

Upon reading and filing of the Notice of Motion by Plaintiff dated September 23, 2005 for an Order striking the answer and affirmative defenses of Defendant Bernice Perez, directing the entry of Summary Judgment in favor

of the Plaintiff against said Defendant for the relief demanded in the complaint and for an Order pursuant RPAPL § 1321 appointing and directing a referee to compute the amount due to the plaintiff, and to examine and report whether the mortgaged premises can be sold in parcels, and upon all prior pleadings and proceedings heretofore had herein,

AND upon the Affirmation dated September 23, 2005 of Mikelle V. Komor of Fein, Such & Crane, LLP, attorneys for the Plaintiff, and the Affidavit of Joyce Bonner, sworn to on September 1, 2005 setting forth the prior proceedings and the various procedural facts which entitle the Plaintiff to the requested relief, and upon proof of the service thereof;

NOW, ON MOTION, of Fein, Such & Crane, LLP, attorneys for Plaintiff, it is ORDERED, that plaintiff's motion is granted and the Answer and Affirmative Defenses of Defendant Bernice Perez be and the same hereby is stricken, and it is further ORDERED that

Theodore John Brundage Esq., 200 Mamaroneck Avenue, White Plains, New York, 10601 is hereby appointed Referee to, with convenient speed, ascertain and compute the amount due upon the bond(s) note(s) and mortgage(s) being foreclosed in this action, except

attorneys' fees, and to examine and report whether the mortgaged premises can be sold in parcels for a fee of $500.00. and it is further

ORDERED that the matter shall be maintained under the same index number; and it is further

ORDERED, that, if required, the Referee take testimony pursuant to RPAPL Section 1321.

"s/".

Hon. Linda S. Jamieson
Justice of the Supreme Court

Dated: White Plains, New York
December 16, 2005
Hon. Linda S. Jamieson
Supreme Court Justice

PETITIONER'S NEW ATTORNEY OF RECORD -

Patricia Ann Mooney, Esq.

Respondent's Atty. Mikelle, Komor Notice of Motion for Summary Judgment September 23, 2005 And Order of Reference October 12. 2005. (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1346-1526).

Attorney Patricia Ann Mooney Affirmation in Opposition W/Petitioner Affirmation in Opposition to Plaintiff's Motion for Summary Judgment and Order of Reference, September 23, 2005(Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1558-1638).

Question Prosecution by:

The Affidavit of Joyce Bonner, Sr, Legal Actions Specialist in support of the instant motion of Option One Mortgage & Wells Fargo Bank Sworn to and Subscribed before J.D. Rivers Commission #1552319 Notary Public-California Orange County on September 1, 2005.

"s/".

J. D. Rivera, Notary Public

Joyce Bonner, Sr, Legal Actions Specialist allegation (Ref. Court of Appeals & Appellate Appendix (Vol.4. P.1354-1360 P.1356 #10, 11) Court of Appeals & Appellate Appendix Vol.4. P.1354-1360 P.1357).

(d) Paragraph "Fourth" alleges that on or about December 28, 2001 Defendant borrowed from Plantiff's predecessor in interest sum of $292,000.00 and recites Defendant's execution and delivery of the Promissory Note and the general terms of repayment. Attached hereto as Exhibit A is a copy of the Note signed by the Defendant, which speaks for itself. Defendant does not deny executing said not.

It does speaks for itself Petitioner executed said Mortgage with: First Alternative Mortgage on December 28, 2001 not Wells Fargo nor Option One Mortgage.

Petitioner never received notification of a 'Goodbye" letter from First Alternative Mortgage Assignment Control # 420580426 (MTGB) Note Sum of $292,000 Nor received a "Hello" letter regarding any transfer of alleged mortgage to Option One Mortgage Assignment Control #430870131(does not state MTGB; nor is there a Note Sum);

A Servicer who do not hold the Mortgage and Note cannot transfer said Mortgage & Note to Wells Fargo under Assignment Control #440340539(does not state MTGB; nor is there a Note Sum).

Option One further cannot copy Homeowner's Petitioner's initials (BP) /Name from the original Mortgage & Note and paste to another document to create a Mortgage & Note Assignment Transfer .

The Affidavit of Joyce Bonner, Sr, Legal Actions Specialist states:

#10. "I have been advised by counsel that in about June 2005, she was advised by Defendant's counsel (Patricia A.

Mooney) that defendant had in fact received the aforementioned money orders.[20]

11. Thereafter, the parties appeared before the Court for several conferences in an attempt to resolve this matter. However, at this time, the parties are unable to reach a settlement.

Atty. Patricia Mooneys (Ref. Court of Appeal & Appellate Div. Appendix vol.4.P.1549-1557 Professional service Statement)[21] informed me Respondent's Atty. Mikelle Komor, didn't have a problem with the short pay-

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[20] Again this affidavit claimed Petitioner made no payments since October 1, 2002. Plaintiff's Motion filing allegations defaulted with Now it's only one (1) Payment June 2003; further allegations "Petitioner never tendered such June 2003 payment" (Conflicting) which was remitted by Petitioner's 1st Atty. Carol Marks . The real issue that needs to be validated, clarified by Plaintiff what was the justification for such return of this June 2003's payment returned by Respondent's own Atty. Greg Tabakin now declaring a default. Another real issue that needs to be validated, clarified by Plaintiff marking of "VOID" on such June 2003's payment.

off ($425,000 at this time) but the Company MGIC Insurance, 270 East Kilbourn Avenue, Milwaukee, Wisconsin 53202 that held the PMI Insurance Certificate #16433008, refused such offer. I faxed Atty. Patricia A. Mooney the document from my mortgage validating there was no PMI Insurance on said mortgage with 20% down-payment paid $73,000 on property ($365,000).

Petitioner tried every avenue to get from under Wells Fargo and save our Home.

Petitioner again tried to Refinance and choose 1st Capital Mortgage Company 3125 Veterans Memorial

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[21] Patricia A. Mooney's Professional Service Statement Validates that this issue was another stumbling block by Plaintiff that was put before Petitioner. Respondent's destruction to Petitioner's Credit Files (Ref. Court of Appeal & Appellate Div. Appendix Vol.3 P 1012-1038) to prevent any type of Refinancing. Southern Star Mortgage, Ralston Calder and many more (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P. 768-774).

Highway, Suite 3, Ronkonkoma, NY 11779 to refinance (Ref. Court of Appeal & Appellate Div. Appendix Vol.4.P. 1527-1548) which was submitted to the Court through Attorney Randall Chiera[22] of Chiera & Associates a short-payoff letter from Carmine Notaro.

Such company submitted a letter on Petitioner's behalf to show the courts that I was attempting a Refinance. That they was working with Petitioner

Answer filed November 1, 2005 by Bernice Perez, reluctant Attorney Patricia Mooney (Ref. Court of Appeal & Appellate Div. Appendix Vol. 4.1558-1638).

Respondent Attorney Mikelle Komor November 7, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1639-1644).[23]

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[22] Atty. Patricia A. Mooney on Maternity Leave now.

[23] In this Reply Affirmation Respondents Attorney Mikelle V.Komor finally admit the June 2003's payment was sent back by her Office but not WHY such payment was returned after all

Respondent Attorney Mikelle Komor contention Petition tried to force her client to take short pay off. Amount owed due on Mortgage originally 289,994.00 at now $425,000.

When Appraisal (Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P.315-335) value of $645,000 was submitted to the Court regarding Refinance Respondent Attorney stated " Plaintiff would rather repossess/foreclose sell the property, be paid in full" which would have been an additional enrichment of ($240,000) to Respondent.

Larceny Theft: Model Penal Code §223. 53 So. 2d 533, 536. Statue of : Westminster I. c. 15 (1275).

Violation home Equity Protection Act.

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this time of prosecuting by her motions Filing Petitioner that I defaulted by such payment; Petitioner never tendered such payment.

This effectively dilutes the equity from the property places the Petitioner in jeopardy of further default, and puts the Petitioner in the position of spending years paying off additional Loan balances without developing any equity.

In such Reply affirmation by Atty. Mikelle V. Komor #9. " The fact remains that Defendant defaulted on her Mortgage payments , then again shirked her financial obligation by failing to abide by the terms of the Repayment Plan and failing to cure the arrears on the Mortgage that existed as of October 2002 resulting in the commencement of the instant foreclosure action. Defendant has no defense to the foreclosure action as all payments submitted to Plaintiff have been accounted for and there are no further issues in this regard.

Petitioner's Question:

Plaintiff is just now admitting to the possession of the June 2003's payment that Petitioner have been held in

court declaring by Plaintiff's Attorney Mikelle V. Motion filing that "I never tendered" such payment and declaring a default by.

Everything was not accounted for again why did not the court Judge Jamieson question Plaintiff's Attorney Mikelle V. Komor upon this admittance as to this discrepancy.

Petitioner retrieved both documents personally (Petitioner felt something was brewing since had not heard from attorney within 30 days) from Westchester County Clerk Office 1/9/06. With (1) week before the 30 days would have expired for Petitioners to legally been able to appeal. I would have lost my house and Respondent would have gotten away clean.

Result of Casebook Transactions printed 10/14/2008 & 3/30/2009 Westchester County Clerks Office There is still No Notice of Entry by Respondent 's Attorney

Mikelle V. Komor or Petitioner's Attorney Patricia A. Mooney which validates Petitioner's allegation such was never rendered to Petitioner The Granting of Summary Judgment 12/16/ 2005 by Judge Linda S. Jamieson so as Defendant could prepare a defense and none was rendered by Defendant's Attorney to the November 7, 2005 Affirmation of Plaintiff's Attorney Miklelle V.Komor (Ref. Court of Appeals & Appellate Div. Appendix Vol. 4. P. 1639-1644) prior to such Judgment. WHY?

(Ref. Court of Appeal & Appellate Div. Appendix Vol. 4. P1645-1654).

APPENDIX E

Appeal taken to

Appellate Division –Second Department

January 13, 2006

Basis for Judicial Intervention

1. Review of Plaintiff's reasons for Filing Foreclosure.
2. Review of Facts & Evidence in Opposition.
3. Review of Prior (2) Decisions & Order 3/22/044 & 4/12/05 of Hon. Linda S. Jamieson.
4. Review of Plaintiff's Attorney Reply Affirmation Dated Nov. 4, 2005 & Forwarded To Judge Jamieson Nov. 7, 2005.
5. Review of Plaintiff's Responses & Defenses.
6. Denial of Defendant's right to be heard and striking of my testimony which hold much merit and validity.
7. The unethical behavior of all attorneys involved passed and present which affected this case.

8. No notification of the Granting of Summary Judgment to Date 1/9/06 by Attorneys in hopes of Defendant missing the Appeal Deadline.

PARTY INFORMATION

Wells Fargo Bank	Plaintiff
Option One Mortgage	Plaintiff
Bernice Perez	Defendant/Appellant
Mikelle V. Komor, Esq.	Attorney for Plaintiff
Patricia A. Mooney, Esq.	Attorney for Defendant
Harry S. Stokes, Esq.	Attorney for Defendant

Order to Show Cause, May 2, 2006 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4. P 1655-1660).

APPENDIX F

Judge Linda S. Jamieson Decision & Order to Order to Show Cause May 2, 2006 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4. P 1669-1672).

Faxed to:

05/04/2006 15:40 9149954323 West Sup City Court

At on IAS, Part of the Supreme Court of the State of New York, Held in County of Westchester, 111 Dr. Martin Luther King, Jr. Blvd, White Plains, New York on the 4th day of May 2006

SUPREME COURT of STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: Hon Linda S. Jaimeson

Wells Fargo Bank, Minnesota, National Associations, As Trustee for Registered Holders of Option One Mortgage Loan Trust 2002_A Asset-Backed Certificates, Series 2002-A, WITHOUT RECOURSE

Plaintiff

V

Bernice Perez Defendant (s)

Received May 2. 2006
Chief Clerk Westchester Supreme
and County Courts
Index No: 11365-03
Order To Show Cause

Received Judge Jamieson's Part May 2, 2006

Upon reading and filing the annexed affirmation of PATRICIA A MOONEY, ESQ., dated the 2nd day of May, 2006, and upon all pleadings and proceedings had and filed herein,

Let BERNICE PEREZ the Defendant herein, or their attorneys, show cause before this Court , at an IAS Part hereof , to be held at the Courthouse located at 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York, on May 18, 2006, at 9:30 o' clock in the forenoon (appearances required) why an order should not be entered permitting Chiera & Associates, to be relieved

as council, granting Defendant BERNICE PEREZ ninety (90) days to obtain new council should she desire to do so, and granting a ninety (90) day stay of this litigation including the foreclosure of her property as sought by the PLAINTIFF herein,

Let servicer of this Order and, together with the papers upon which it is granted, upon Defendant, BERNICE PEREZ by first class mail upon her on or before the 5th day of May, 2006, be deemed good and sufficient service of this application.

There has been no prior application to this Court for the relief sought herein.

Affidavits of Service are to be filed with the Part Clerk on or before the return date.

Dated: White Plains, New York

May 4, 2006

ENTER

"s/".

J.S.C. Hon. Linda S. Jamieson

Patricia A., Mooney Chiera Assoc., Patricia A. Mooney Esq.,800 Central Park Avenue, Scarsdale New York. Hurrily now run to Judge Jamieson to filed to be relieved as Counsel after being caught and confronted [24] and Petitioner had filed an Appeal.

Petitioner's Reply Affirmation May 15, 2006 to Attorney Patricia Ann Mooney Order to Show Cause, May 2, 2006 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P.1661-1668).

Respondent /Attorneys and Petitioner's Attorneys in this matter caused injury to Petitioner to form a trusting relationship with any attorney by such unethical

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[24] Disciplinary rule 1-102 200.3] Malicious Prosecutorial Misconduct, Ineffective and inadequate Counsel.

behavior and prosecution and thus had to teach myself to be my own attorney.

Federal Rules of Civil Practice-

Summary Judgment:

Citing the: Opinion of the United States District Court for the Southern District of West Virginia at Huntington Michael Short, Plaintiff v. Wells Fargo Bank Minnesota, N.a.; Countrywide Home Loans, Inc.; Tri-State Title, Inc., a corporation; Bonnie Sue Fleming; and, Douglas M. Legg, Defendants
Civil Action No. 3:04-1096 Document 94 Filed 11/18/2005
Fed. R. Civ. P. 56 (c) 2005.

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

Petitioner did so by submitting all documentation to show the Conflicts in Respondent's commencement & Filing in this Action.

(Ref. Court of Appeal & Appellate Div. Appendix Vol. 4. P.1673-1674).

Appendix G

.Supreme Court of the State of New York

Appellate Division-Second Department

Opinion Published- Appellate Division-Second Department affirm decision Dated June 25, 2008 to 1st Appeal 2006-851 of the lower court Order & Decision under Hon. Linda S. Jamieson Granting Summary Judgment Dated December 16, 2005.Wells Fargo Bank Minn., Assn. v Perez, 41 AD3d 590, 590)

___AD3d___ Submitted- May 11, 2007

Robert W. Schmidt, J.P.
Fred T. Santucci
Peter B. Skelos
Robert A. Lifson, JJ.

2006-851 DECISION & ORDER

Wells Fargo Bank, Minnesota, National Association, etc., respondent, v Bernice Perez, appellant,

(Index No. 11365/03)

Bernice Perez, Mount Vernon, NY., appellant, pro se.

Fein, Such & Crane, LLP, Chestnut Ridge, NY (Mikelle V. Komor of Counsel), for respondent.

In an action to foreclose a mortgage, the defendant appeals from an order of the Supreme Court, Westchester County (Jamieson, J.), entered December 16, 2005, which, inter alia, granted the plaintiff's motion for summary judgment on the complaint and dismissing her affirmative defenses, and to strike her answer.

ORDERED that the order is affirmed, with costs.

Contrary to the defendant's contention, the Supreme Court properly granted the plaintiff's motion for summary judgment on the complaint and dismissing her affirmative defenses, and to strike her answer. The plaintiff established its entitlement to judgment as a matter of law by submitting the relevant mortgage and note, and demonstrating that the defendant was in default under the terms of the mortgage and the subsequent repayment plan(see *Wolf v Citibank, N.A., 34 AD3d 574;JP Morgan Chase Bank v Gamut-Mitchell, Inc. 27 AD3d 622; Charter One Bank* v *Houston, 300 AD2d429; Federal Home Loan Mtge. Corp. v Karastahis, 237 AD2d 558; Wasserman v. Harriman, 234 AD2d 596; DiNardo v Patcam Ser. Sta., 228 AD2d 543).* In opposition, the defendant failed to submit

any evidence raising a triablle issue of fact rebutting the plaintiff's showing or as to the merit of any of her affirmative defenses (*see Wolf v Citibank, N.A., supra, Charter One Bank, v Housdton, supra; Home Sav. Of Am. V Issacson, 240 AD2d 633*).

SCHMIDT, J.P., SANTUCCI, SKELOS AND LIFSON, JJ., concur.

ENTER:

"s/".

James Edward Pelzer

Clerk of the Court

PETITIONERS RESPONSE:

The Supreme Court did not properly grant the plaintiff's motion for summary judgment on the complaint and by evidence presented dismissing Petitioner's affirmative defenses, and striking her answer.

Plaintiff did not establish its entitlement to judgment as a matter of law by submitting substantial documentation or proof that the Petitioner was in default under the terms of the mortgage and the subsequent Repayment Plan.

Plaintiff did not establish its entitlement to judgment as a matter of law by submitting the relevant mortgage and note.

Such lost on this Appeal 2006-851 was due to Respondent's Atty.Mikelle V. Komor rendering to this Court of Law:

False illegible documentation; Concealment and Falsied evidence, Tampering Re: Petitioner's June 2003's Payment; The Forced deceptive establishment of Plaintiff's Repayment Agreement. The Destruction to Petitioner's Credit Files; False sworned Testimony by:

Affidavit of Farah Torres Carr, Affidavit of Joyce Bonner; Plaintiff's Motion To Renew: October 24, 2004 February 24, 2005 and all other False statements in Reply Affirmations and Court documentation. Interfering in the workings of Petitioners Attorney. False Statements to Government Agencies.

Petitioner fought this matter in a defensive manner not a vindictive manner to substantiate or validate any of my defenses

Petitioner have never denied and honestly acknowledge that my contentions were inadequate and not properly outline :

> "After being "Thrown to the wolves; left to sink or swim with one week Appeal 2006-851 taken January 13, 2006. to file an Appeal, save our home, with no legal expertise, duress, health constraints created to such lost and the failure.

Plaintiff's own Statement To this Appellate Division: Plaintiff's Respondent Brief dated: August 9, 2006 (Pg. 15), Plaintiff's own Statement: "Moreover, the

Appellate Division, Second Department has set forth the requirement for the granting of summary judgment in a action to foreclose a mortgage, repeatedly stating that: " It is settled that in moving for summary judgment in an action to foreclose a mortgage, a plaintiff establishes its case as a matter of law through the production of the mortgage, the unpaid note, and evidence of the default***

When a plaintiff does so, it is incumbent upon the defendant to assert any defenses which could properly raise a viable question of fact as to [the] default.

(Plaintiff's Respondent Brief dated: August 9, 2006 P.16.prgh 1) Plaintiff's own Statement to this Appellate Division: "In the instant case, Plaintiff established its case as a matter of law on the October 15, 2005 for summary judgment in presenting to the lower court the Note and Mortgage signed by Perez and held by Plaintiff, and illustrating clearly that Perez was in default under

the terms of the Mortgage and the subsequent Repayment Plan.

Plaintiff –Respondent Brief dated: August 9, 2006

Conclusion {Pg.23).

> "Because the evidence presented to the lower Court clearly illustrated the existence of the Note, Mortgage and default on the Mortgage and the Repayment Plan, it is respectfully submitted that the Lower Court's Order Granting Summary Judgment and Appointing a Referee to Compute dated and entered December 16, 2005 should be affirmed in its entirety, or in the alternative, that the instant appeal should be dismissed based upon failure of Perez to comply with this Court's Guide to Civil Practice and Rules of Procedure, with an award of attorney's fees and costs incurred upon appeal to Plaintiff.

WHAT EVIDENCE? Plaintiff have never rendered any evidence to the Court to substantiate their Claim:

Judge Linda S. Jamiesons Ruling March 22, 2004

April 12, 2005 Ruling- Loan History had to be Forced by NYS Banking with all it's defects.

INTRINSIC FRAUD- That directly involves the issues in a lawsuit. Facts learned from a document itself, not from outside information about it.

However, the second half of the appellate Ruling by which they Affirmed the decision of Judge Linda S. Jamieson and the Granting of Summary Judgment, as to Plaintiff true ownership of said Mortgage and Note. SUBSTANTIATED: The Mortgage and Note signed by Appellant (Perez) was for First alternative Mortgage December 28, 2001 Not Wells Fargo/Option One Mortgage.

1. Assignments Certified 12/10/08 registered in the Westchester County Land & Records Office, Room 345. Shows First Alternative Mortgage Assignment Control # 420580426 (MTGB) Note

2. Sum of $292,000 As The True and only Mortgage & Note Holder:
3. DOES NOT SUBSTANTIATE:
4. Option One Mortgage Assignment Control #430870131(does not state MTGB; nor is there a Note Sum);
5. A Servicer who do not hold the Mortgage and Note cannot transfer said Mortgage & Note to Wells Fargo under Assignment Control #440340539(does not state MTGB; nor is there a Note Sum).

APPENDIX H

Motion to Reargue Dated September 25, 2007

Ref. Court of Appeals & Appellate Div. Vol. P.

Supreme Court of the State of New York

Appellate Division-Second Department

Robert W. Schmidt, J.P.
Fred T. Santucci
Peter B. Skelos
Robert A. Lifson, JJ.

2006-00851 DECISION & ORDER
ON MOTION

Wells Fargo Bank, Minnesota, National Association, etc., respondent, v Bernice Perez, appellant,
(Index No. 03-11365)

Motion by the appellant for leave to reargue an appeal from an order of the Supreme Court, Westchester County, entered December 16, 2005, which was determined by decision and order of this court dated June 12, 2007.

Upon the papers filed in support of the motion and the papers filed in opposition there to, it is

ORDERED

that the motion is denied, with $100 costs.

SCHMIDT, J.P., SANTUCCI, SKELOS AND LIFSON, JJ., concur.

ENTER:

"s/".

James Edward Pelzer

Clerk of the Court

(Ref. Court of Appeal & Appellate Div. Appendix 4.Vol. P.1675-1676)

APPENDIX I

State of New York Court of Appeal Motion Leave to Appeal Dated: March 18, 2008:

STATE OF New York

Court of Appeals

At a session of the Court of Appeals Hall in the City of Albany on the eighteenth Day Of March 2008

PRESENT, Hon. Judith S. Kaye, Chief Judge, Presiding

2-10 Mo. No 113

Wells Fargo Bank Minnesota,

National Association, &c., Respondent,

V.

Bernice Perez, Appellant

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is dismissed as untimely (see CPLR 5513(b) ; Eaton v. State of new York, 76 N2d 824 [1990])

"s/".

Stuart M. Cohen

Clerk of the Court

State of New York Court of Appeal Motion to Reargue

Dated: June 25, 2008 (Denied) (Ref. Court of Appeal &

Appellate Div. Appendix Vol.

APPENDIX J

STATE OF New York

Court of Appeals

At a session of the Court of Appeals
Hall in the City of Albany on the
twenty-Fifth Day Of June 2008

PRESENT, Hon. Judith S. Kaye, Chief Judge, Presiding

2-10 Mo. No 514

Wells Fargo Bank Minnesota,

National Association, &c., Respondent,

V.

Bernice Perez, Appellant

A Motion for re-argument of motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

"s/".

Stuart M. Cohen
Clerk of the Court

Judgment of Foreclosure and Sale September 24, 2008

Hon. Arazio Bellantonio (Ref. Court of Appeal &

Appellate Div. Appendix Vol 1. P.15-20; P.31-36).

Appendix K

At on IAS, Part of the
Supreme Court of the State of
New York, County of Westchester,
on the 24 day of September 2008,

PRESENT: Hon. Orazio R. Bellantoni, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
OPNY520

Wells Fargo Bank, Minnesota, National Associations, As Trustee for Registered Holders of Option One Mortgage Loan Trust 2002_A Asset-Backed Certificates, Series 2002-A, WITHOUT RECOURSE

Plaintiff

V

Bernice Perez Defendant

Filed: Oct. 1, 2008
Timonthy C. Idioni

Westchester County Clerk
JUDGMENT OF
FORECLOSURE AND SALE
Index No. 11365/03
Motion Date: 7/23/08

On the Summons, Complaint and Notice of Pendency of Action duly filed in this action on 07/17/03 and upon renewed notice of Pendency filed in this action on 04/07/08, and all proceedings thereon, and on reading and filing the Affirmation dated June 24, 2008 of Jace McColley, Esq. of Fein , Such & Crane, LLP attorneys for the plaintiff, showing that each of the defendants herein has been duly served with the Summons and Complaint in this action, or has voluntarily appeared, and stating that more than the legally required number of days has lapsed since said defendants were so served and/or appeared; and that none Of the defendants has served any answer to said complaint nor has their time to do so been extended; except that Defendant Bernice Perez through her former attorney Carol R. Mark, Esq. filed a contested answer, said answer

was struck by the court granting Summary Judgment filed and entered on 12/16/2005. The Complaint herein and due Notice of Pendency of this action containing all the particulars required to be stated therein was duly filed in the Office of the Clerk of the County of WESTCHESTER. On 07/17/03, and an Order of Reference having been duly made to compute the amount due to the plaintiff upon the bond(s)/note(s) and mortgage(s) set forth in the Complaint and to examine and report whether the mortgaged premises can be sold in parcels,

And on reading and filing the Oath and Report of THEODORE JOHN BRUNDAGE, Esq., the referee name in said Order, by which Report, dated May 9, 2008, it appears that the sum of $528,086.87, was due on April 11, 2008; and that the mortgaged premises should be sold in one parcel,

NOW, on motion of FEIN, SUCH 7 CRANE, LLP, attorneys for the plaintiff, it is

ORDERED, after consideration of defendant's affidavits in opposition dated &/14/08 & 7/17/08,

ORDERED, that the said Oath and Report of the aforementioned Referee is hereby, in all respects, ratified and confirmed; and it is further

ORDERED, ADJUDGED AND DECREED, that the mortgaged premises, and if not sold sooner, any all personal property in the plaintiff has a security interest, as described in the Complain in this action, be sold as one parcel at public auction at the Lobby of the Westchester County Courthouse , 111 Dr. Martin Luther King; Jr. Blvd, White Plains, NY by and under the direction of THEODORE JOHN BRUNDAGE, Esq. who is hereby appointed Referee for that purpose; that the said Referee give public notice of the time and place of such sale according to law and the practice of this Court, in a publication which complies with the statutory requirements

set forth in Real Property Actions and Proceedings Law Section 231, to wit: The Journal News; and it is further

ORDERED, ADJUDGED AND DECREED, that the said sale shall be subject to any equity of redemption of the UNITED STATES OF AMERICA to redeem the premises within 120 days from the date of sale should the United States be a defendant in the action; and it is further

ORDERED, ADJUDGED AND DECREED, that the Referee conducting the sale shall pay out of the proceeds, as costs of the sale, in accordance with their priority according to law, all taxes, assessments, sewer rents and water rates and unpaid City Agency Liens which are at the time of sale a lien on the premises, together with such interest or penalties as may have lawfully accrued thereon to the date of payment; and it is further

ORDERED, ADJUDGED AND DECREED, that in the event the property is purchased by a third-party, any

such taxes, assessments, sewer, rent and water rates shall be pro-rated as of the date of transfer of title, and the third-party purchaser shall assume all responsibility for same as of the date of such transfer of title, and it is further

ORDERED, ADJUDGED AND DECREED that the sale be subject to:

a) Rights of the public and others in and to any part of the mortgaged Premises that lies within the bounds of any street, alley, or highway; restrictions and easements of record;

b) Any state of facts that an accurate, currently dated survey might disclose;

c) Rights of Tenants, if any. It shall be the responsibility of the Purchaser to evict or remove any parties in possession of the Premises being foreclosed herein;

d) The right of redemption of the United States of America, if any;

e) The present conditions of the property which is being sold "as is" without any representations or warranties whatsoever;

f) Any arrangements made prior to the sale between the Mortgagee and the Mortgagor for the reinstatement , payoff, modification or workout of the delinquent note and mortgage which are unknown to the Referee at the time of the sale. In such event, the sale shall be deemed null and void and any deposit will be promptly refunded to the successful bidder, without recourse against the Referee, the Plaintiff, the plaintiff's attorneys, agents or assigns or the borrowers; and it is further

g) ORDERED, ADJUDGED AND DECREED, that the plaintiff may, after entry f the judgment, add to the amount due any and all expenses incurred in the maintenance and preservation of the

h) property for inspection fees, maintenance charges, taxes and assessments and hazard insurance premiums or other advances necessary to preserve the property which were not included in the Referee's report, whether or not said advances were made prior to or after entry of judgment.

AND that the plaintiff or any other parties to this action may become the purchaser or purchasers at such sale; that in case the plaintiff shall become the purchaser at the said sale, it shall not be required to make any deposit thereon; that said Referee execute to the purchaser or purchasers on such sale a Deed of the premises sold; that such Referee ion receiving the proceeds of such sale shall deposit the proceeds on sale in his own name as Referee in IOLA ACCOUNT and shall thereafter make the following payments and checks drawn for that purpose:

FIRST: The statutory fees of said Referee for conducting the sale shall not exceed $500.00. The Referee will be entitled to a fee of $0 for each sale that is cancelled or adjourned.

In the event of a third party sale or adjourned or cancelled sales, the Referee may apply for additional fees to be awarded by separate order, upon application of the Referee on notice to all parties. In the event that the Referee intends to apply for a further allowance of the Referee's fees, the Referee may leave upon deposit such amount as will cover such additional allowance to await the further order of this Court after Application duly made.

SECOND: The expenses of the sale including posting and advertising upon presentation of bills resented to the referee and certified to be correct, duplicate copies of which shall be annexed to the Referee's report of sale when filed. Such expenses shall not include the deed transfer tax, which shall be paid by the successful bidder.

THIRD: In the event the property is purchased bya third party, time is of the essence with respect to the closing date. Closing must occur no more than 45 days from the date of the sale, unless agreed upon in writing by the Plaintiff and third party purchaser. The failure of Purchaser to appear ready, willing and able to pay the balance of the purchase price within 45 days from the date of sale is a material default under the terms of sale. If Purchaser so defaults, the foreclosure sale will automatically be rescheduled and the Purchaser's deposit will be forfeited and applied towards the costs and expenses associated with the default, such as, but not limited to, the rescheduling of the foreclosure sale.

FOURTH: Said Referee shall also pay to the plaintiff or its attorney the sum of $3, 912.31 adjudged to the plaintiff for costs and disbursements in this action, to be taxed by the clerk, together with an additional allowance of $300.00 hereby awarded to the plaintiff in addition to

costs; and also $528, 086.87 the said amount so reported due as aforesaid, together with interest on the principal balance due at the rate set forth in the note and mortgage from April 12, 2008 to the date of entry of this Judgment then with interest on the whole at the legal rate from the date of entry of Judgment to the date of transfer of the Referee's deed, or so much there of as the purchase money of the mortgaged premises will pay of the same, plus reasonable attorneys fees in the amount of $52, 280.00 and any maintenance, preservation or other expenses paid by the plaintiff as authorized by this Judgment pursuant to the terms of the Mortgage, plus reasonable attorney's fees in the amount of $250.00 if the mortgaged is discharged or reinstated, which fees are to be services rendered in vacating Judgment of Foreclosure, discontinuance of legal action, and canceling the Notice of Pendency, not previously included in any computations upon presentation to the Referee of the proper receipts.

FIFTH: That in case the plaintiff be the purchaser of said mortgaged premises at said sale, said Referee shall not require the plaintiff to pay in cash the entire amount bid at said sale, but shall execute and deliver to the plaintiff a deed of the premises sold upon the payment to said Referee of the amounts specified above in items marked "First" and "Second"; that the balance of the amount bid, after deducting the amounts paid by the plaintiff, for Referee's fees, and advertising expenses, shall be allowed to the plaintiff and applied by said Referee upon the amounts due to the plaintiff as specified above in item marked "Third"; that if after so applying the balance of the amount bid , there shall be a surplus over and above said amounts due to the plaintiff, the plaintiff shall pay to said Referee, upon delivery of said Referee's Deed, the amount of such surplus; that said Referee on receiving said several amounts from plaintiff shall then deposit the balance.

SIXTH: That said Referee deposit the surplus money, if any, with the WESTCHESTER COUNTY COMMISSIONER OF FINANCE within five days after the Same shall be received and be ascertainable to the credit of this action, to be withdrawn only on the written order of this Court signed by a Justice of this Court, that the said Referee make his Report of such sale under oath showing the disposition of the proceeds of the sale and file it with the Clerk of the County of WESTCHESTER within thirty days after completing the sale and executing the proper conveyance to the purchaser and that if the proceeds of such sale be insufficient to pay the amount reported due the plaintiff with interest and costs as aforesaid, the plaintiff may recover of the defendant(s) BERNICE PEREZ the whole deficiency or so much thereof as the Court may determine to be just and equitable of the mortgage debt remaining unsatisfied after the sale of the mortgaged premises and the application of the proceeds thereof,

provided a motion for a deficiency judgment shall be made as prescribed by Section 1371 of the Real Property Actions and Proceeding Law within the time limited therein, and the amount thereof is determined and awarded by an order of this Court as provided for in said action; and it is further

ORDERED, ADJUDGED AND DECREED, that the purchaser or purchasers at such sale be let into possession upon servicer of the Referee's deed pursuant to CPLR§308; and it is further

ORDERED, ADJUDGED AND DECREED, that each and all of the defendants in this action and all persons claiming under them, or any or either of them, after the filing of such Notice of Pendency of this action, be and they hereby are, barred and foreclosed of all right, claim, lien, title, interest and equity of redemption in their said mortgaged premises and each and every part thereof; and it is further

ORDERED, ADJUDGED AND DECREED, that the Referee at the time of sale may accept a written bid from the Plaintiff or the Plaintiff's attorneys, just as though the Plaintiff were physically present to submit said bid; and it is further

ORDERED that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22NYCRR Part 36), including , but not limited to, Section 36.2 (c) ("Disqualifications from appointment"), and Section 36.2 (d) ("Limitations on appointments based upon compensation"); and it is further

ORDERED, that the referee appointed to sell herein be served with a signed copy of this Judgment of Foreclosure and Sale with notice of entry.

That a description of the said mortgaged premises herein before mentioned, is annexed hereto as Schedule A-Legal Description.

Dated: September 24, 2008
White Plains, New York

"s/".
Hon. Orazio R. Bellantoni
Supreme Court Justice

Plaintiff's Notice of Pendency:

A Conference was scheduled On July 25, 2006 Westchester County Supreme Court 111. Martin Luther King Jr. Boulevard, White Plains New York Hon. Judge Linda S. Jamieson, Room 1401 since assigned to Matrimonial Court.

Respondent's Attorney Mikelle V. Komor informed the Legal Assistance newly assigned Judge William S. Giacomo, Respondent was withdrawing their Motion for Foreclosure and Sale filed April 17, 2006.

Respondent's Attorney Mikelle V. Komor did not request an extension, renewal of such Notice of Pendency (Original July 13, 2003- July 13, 2006) which by expiration, became ineffective-cannot be revived on the same cause of action or claim.[25]

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[25] An order to extend a notice of pendency must be filed, recorded, and indexed before the prior notice of pendency has expired.

Respondent Attorney Jace McColley, Esq., Notice of Motion For Judgment of Foreclosure and Sale (Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P. 40-176) Renewed Notice of Pendency 4/7/08 (Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P.50)

The complaint herein and due Notice of Pendency of this action containing all the particulars required to be stated therein was duly filed in the Office of the Clerk of the County of Westchester on 04/07/08 was rendered to Petitioner in this motion on July 3, 2008 which has a almost 2 year lapse (July17, 2006- July 17 2008) and by expiration became ineffective cannot be revived on the same cause of action or claim.

CHAIN OF TITLE: Massachusetts Land Court Judge Keith Long refuse to reverse Ruling Wells Fargo & U.S. Bank: Dating as far back as 1989 the real possibility that

ten thousands of foreclosures in the state could be invalidated.

The core issue has to do with filings that banks are required to make any time they sell a mortgage to a new investor.. filings they neglected in hundreds of thousands if not million of instances. Judge Long ruled that a bank cannot foreclose on a home unless it can present the documents that show who owned the mortgage each time the loan changed hands.

"The issues in this case are not merely.. a matter of dotting I's and crossing t' s. Instead, they lie at the heart of the protections given to homeowners and borrowers. Mortgage Assignment(secured debt)that lack possession or formal Assignment of Note (unsecured debt)cannot force Sale of the property to satisfy debt and thus be Foreclosed upon. Mortgage Assignment must be accompanied by Note.

PLAINTIFF LACKS STANDING CPLR § 3215 (f): (d) Adjudication of Plaintiff's breach of Duty. Plaintiff has failed to establish a valid assignment of the mortgage and Note by the owner.

Respondent Attorney Jace McColley, Esq., Notice of Motion For Judgment of Foreclosure and Sale (Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P. 40-176)

Now the Respondent Motion produces only An Assignment

The True Mortgage & Note Holder under control #420580426 Type of Instrument MTGB Serial #C850454 Assignment For the Note sum of $292,000.

also (Ref. Court of Appeal & Appellate Div.Appendix Vol.1.P. 40-176) Vol. 1. P.157 Blacked out unreadable Bar Code .

AND: Mortgage Assignment #430870131 And does not Stated (MTGB)[26] Note sum of None Option One Mortgage Court of Appeal & Appellate Div.Appendix Vol.1.P. 40-176) P.167 Blacked out unreadable Bar Code Missing in Plaintiff's Attorney's Motion is the inclusion of Assignment 440340539 Wells Fargo stated (to be assigned) which was always questionable and acquired Summary Judgment December 16, 2005 alleged recorded March 12, 2004 Westchester County Clerks Office Land & Records, Rm. 345(Ref. Court of Appeal & Appellate Div. AppendixVol.2.P.592-595 Petitioner Certified 12/3/08) is now totally omitted entirely in this motion.

Why is that? Where did Wells Fargo go?

Conspiracy Wells Fargo & Option One In joint venture for breach of its duty of good faith and fair dealing. *(Wells Fargo) (Option One Mortgage, who*

[26] So now Did Option One Mortgage transfer the Mortgage back to the original Lender after it transferred it to Wells Fargo?

claimed bankruptcy and operating under the title of American Home Mortgage Servicing, Inc. Ref. Court of Appeals & Appellate Div. Appendix Vol. 2. P 596)

Agency: First Alternative Mortgage Letter. (Ref. Court of Appeal & Appellate Div Appendix Vol.2. P.597)

Petitioner's Response: Also "The Bait & Switch Method"'

Legal Standing: Prohibition of Third Party Standing: Plaintiff can only assert his or her own rights as the Mortgage and Note Holder which in fact Plaintiff is not and cannot raise the claims of a third Party who is not and have not been before the court in any proceedings.

Judge Arthur M. Shack's cases, State Supreme Court , Brooklyn , New York - fashions himself a judicial Don Quixote, tilting at the phalanxes of bankers, foreclosure facilitators and lawyers who file motions by the bale. While national debate focuses on bank bailouts and federal aid for homeowners that has been slow

coming, the hard reckoning of the foreclosure crisis are being made in courts like his, and Justice Shack's sympathies are clear. He has tossed out 46 of the 102 foreclosure motions before him in the last 2 years. His often scathing decisions, peppered with allusions to the Croesus-like wealth of bank presidents, have attracted the respectful attention of judges and lawyers from Florida, Ohio and California. At recent Judicial conferences in Chicago and Arizona, several panelists praised his rulings as a possible national model. Judge Shack like a handful of state and federal Judges, has taken a magnifying glass to the mortgage industry. Bankers handed out millions of mortgages-with terms good, bad and exotically ugly-then repackaged those loans for sale to investors from Connecticut to Singapore; Sloppiness reigned. So many papers have been lost, signatures misplaced and documents dated inaccurately that it is often

not clear which bank owns the mortgage. Judge Shacks states:

"If a bank cannot prove ownership, it cannot foreclose'.

Deutsche Bank Case 2008: "The court wonders if the instant foreclosure action is a corporate "Kansas City Shuffle,' a complex confidence game, " . "In the 2006 film 'Lucky Number Slevin,' Mr. Goodkat, a hit man played by Bruce Willis, explains:

'A Kansas City Shuffle is when everybody l looks right , you go left.' "

At legal conferences, judges and lawyers have wondered why more judges do not hold banks to tougher standards. "To the extent that judges examine these papers, they find exactly the same errors that Judge Shack does."

Judge Arthur M. Shack's cases, State Supreme Court , Brooklyn , New York past the caveat taped to his wall-"Be sure brain in gear before engaging the mouth."

The mightiest banks come to his court seeking to take the homes of New Yorkers who cannot pay their mortgages filing foreclosure papers speckled with errors. Deuce Bank Motion –representative signed an affidavit claiming to be the Vice President of two different banks. His office was in Kansas City, Mo. but the signature was notarized in Texas and the bank did not even own the mortgage when it began to foreclose on the homeowner.

Judge Shack States: "I'm s little guy in Brooklyn who doesn't belong to their country clubs. " I won't accept their comedy of errors.

Cite: Nosek vs. Ameriquest,

The Tennessee Court of Appeal Opinion Wells Fargo Home Mortgage, Inc. v John & Angela Filson.

The thirteen page opinion recounts the horror story of the strong arm methods used by Wells Fargo to harass intimidate, ruin their credit so they could charge them a higher interest rate on a re-finance.

We have seen the irresponsible behavior of banks & mortgage companies in the past few months. This is one of the first wrongful foreclosures cases in Tennessee. The bank took this too far and the clients were one of the few that refused to be pushed around.

There was a lot of contract damages proof left out at trial. The strength of the case was in the emotional distress and outrageous conduct claims. Illegal interest on the loan, lost income & attorney fees.

Respondent's Attorney Jace McColley's incorporated affidavit of Joyce Bonner , Sr. Legal Action Specialist Vol.1. P. 86-92 attests and repeated allegations mirror the same false, fraudulent, deceptive conflicting,

contradictory allegations and controversy of defaulted on Mortgage of no payments since October 1, 2002.

Plaintiff is using this controversy to say Petitioner defaulted on the Mortgage Loan & Defaulted w/ June 2003 payment of Repayment Agreement which was settle and defeated with Judge Jamieson's Order & Decision of March 22, 2004.

Used By: Respondent' s Attorney Greg Tabakin

Summons & Complaint Affidavit of Farah Torres-Carr, Foreclosure Specialist November 6, 2003 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2.P. 700-710).

And used: Respondent's Atty. Mikelle, Komor Notice of Motion for Summary Judgment and Order of Reference, (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1346-1526) incorporated affidavit of Joyce Bonner , Sr. Legal Action Specialist (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1354-1360).

Respondent's Attorney's Jace McColley's Affirmation of Regularity in support for Judgment of

Foreclosure and Sale and Attorneys' Fees states: Petitioner (Perez) duly served with the complaint have not served any answer or appeared to the complaint and the time therefore have expired; except through her former Attorney Carol R. Mark, Esq. filed contested answer, and said answer was struck by the Court granting Summary Judgment filed entered on 12/16/2005.

Plaintiff's Attorney Fee's should be denied.

1. Judge Arazio 's Order & Decision reiterate this same False Allegation.
2. Casebook Transactions Printed 10/14/2008 9:42:35 AM & 3/30/2009 8:31:05 AM in Westchester County Clerk also does not show the following Affirmations In Opposition rendered by Petitioner[27].

[27] Ref. Atty. Jan R. Riley Order to Show Cause for Stay of Foreclosure and Sale Entered Westchester County Supreme Court, December 12, 2008 To

Petitioner's- 1st Answer-Affirmation In Opposition Dated & Stamped Westchester County Clerk July 15, 2008 to Respondent's Attorney Jace McColley, Notice of Motion For Judgment of Foreclosure and Sale(Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P. 177-369).

Petitioner's- 2nd Answer-Affirmation In Opposition Stamped Westchester County Clerk July 17, 2008 to: Attorney Jace McColley, Notice of Motion For Judgment of Foreclosure and Sale(Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P. 371-476).

Attorney Jace McColley served Petitioner the decision & Order of Judge Bellatonio Dated September 24, 2008 Foreclosure and Sale Dated November 14, 2008 with Notice of Entry (Ref. Court of Appeal & Appellate Div. Appendix Vol. 1. P. 26-39) entered Westchester County Clerks Office November 17, 2008 w/Affidavit of Service by

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Referee's Sale Date of December 15, 2008 . Hon. Orazio R. Bellantoni J.S. C. Dated December 30, 2008 (Court of Appeal & Appellate Div. Appendix Vol. 2. 526-557.

process server Jill Eckenrode, legal Assistant of Fein Such and Kahn & Shepard sworned/notarized October 29,2008 by Plaintiff's Attorney Jace McColley -Questionable, suspect and suspicious.

Petitioner had obtained decision of Judge Bellatonio September 24, 2008 for Foreclosure and Sale (to keep Time Chain in tact) from Westchester County Clerk's Office and Appeal filed Oct 21, 2008 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 1. P.5-25).

Respondent Attorney Jace McColley, Esq., Notice of Motion For Judgment of Foreclosure and Sale (Ref. Court of Appeal & Appellate Div.Appendix Vol.1.P. 40-176)

Plaintiff Affidavit of Facts didn't have a Certificate of Conformity and comply with CPLR 3215. A Chain of Title and all applicable deeds must be submitted with this application. "if Respondent is not the original Mortgage Holder on original mortgage the names of the original mortgagee and a recital of all assignments in the chains of Title must be submitted".

Signature of the property owner(s) must be notarized on this application Form.

(Ref. Court of Appeal & Appellate Div. Appendix Vol. 1. P. 5-25). Decision of Judge Bellatonio September 24, 2008 for Foreclosure and Sale

APPENDIX L

Appeal taken to

Appellate Division-Second Department

October 21, 2008

Basis for Judicial Intervention

Plaintiff intent to deceive, manipulate and defraud.

Ernest & Ernest v. Hochfelder

425 U.S. 185, 194 & N.12 (1976)

Fraud Limitation:

"Not later than the earlier of :

C. Two years after the discovery of the facts constituting the violation.

D. Five years after such violation'.

38. U. S. C. § 1658 (b)

1. Plaintiff's reasons for Filing Foreclosure.
2. Appellants Mortgage Payments receipts.
3. Appellants Facts & Evidence in defense and Opposition.

4. Hon. Linda S. Jamieson Prior (2) Decisions & Order 3/22/044 & 4/12/05.
5. Plaintiff's Loan History for Appellant forced by NYS Banking.
6. Plaintiff's Attorney Mikelle V. Komor 's Acknowledgement of possession of and return of June 2003 Mortgage payment to which defendant declared in Default by.
7. Plaintiff's responses and Defenses on all motion filing.
8. The unethical behavior of all attorneys .
9. The striking of Appellant's defenses and depriving of my rights to defend.
10. Non- notification by Attorneys of the Granting of the Granting of Summary Judgment 12/16/ 2005.
11. Racial Discrimination (142 U.S.C. §§1981 1982).
12. Violation of Fair Housing Act. 42 U.S. C. §3601.
13. Violation of Equal Credit Opportunity Act, 15 U.S.C. §1691.
14. Exertion of Predatory Behavior.
15. Violation of New York Banking Laws, Regulatory Article 12-D.
16. Violation of Home Equity Protection.

17. Actual Fraud/Fraud in fact; Theft by Deception, Extrinsic Fraud , Deceptive behavior. Fraud in the Inducement Repayment Agreement; Intrinsic Fraud –Loan History forced by NYS Banking. The misrepresentation and deliberate withholding of information which Plaintiff had a duty to disclose; Concealment of the true facts and issues by Fraud upon the Court; Misconduct intended to undermine the integrity of the proceeding. Erroneous conflicting insertion to Appellant's (Perez) Credit Files. Depriving Defendant of the right to be heard.

PARTY INFORMATION

18. Wells Fargo Bank	Plaintiff
19. Option One Mortgage	Plaintiff
20. Mikelle V. Komor, Esq. (Inactive)	Attorney for Plaintiff
21. Jace McColley, Esq. (Active)	Attorney for Plaintiff
22. Samit Patel, Esq. (Inactive)	Attorney for Plaintiff
23. Greg Tabakin, Esq. (Inactive)	Attorney for Plaintiff
24. Bernice Perez	Defendant/Appellant

25. Harry S. Stokes, Esq. Attorney for Defendant (Inactive)
26. Patricia A. Mooney, Esq. Attorney for Defendant (Inactive)
27. American Home
28. Mortgage (Active)

Appendix M

At on IAS, Part of the
Supreme Court of the State of
New York, County of Westchester, held in
the County Courthouse at 111 Dr. Martin
Luther King, Jr. Blvd, in the City of White
Plains, New York on the 12 day of
December 2008.,

PRESENT: Hon. Orazio R. Bellantoni, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
OPNY520

Wells Fargo Bank, Minnesota, National Associations, As Trustee for Registered Holders of Option One Mortgage Loan Trust 2002_A Asset-Backed Certificates, Series 2002-A, WITHOUT RECOURSE

Plaintiff

V

Bernice Perez

Defendant (s)

Received: December 12, 2008
Chief Clerk, Westchester
Supreme and County Courts

Index No. 11365/03

ORDER TO SHOW CAUSE

WITH TRO AND STAY

Upon the reading and filing of the annexed affidavit of Bernice Perez, sworn to on the 10th day of December , 2008 and affirmation of support of Jan H. Riley, Esq., together with all the supporting papers annexed hereto, and upon all the prior papers and proceedings in this action,

NOW, let the plaintiff, WELLS FARGO BANK MINNESOTA, or their attorneys, SHOW CAUSE before an IAS Part of this Court, at 111 Dr. Martin Luther King Jr. Blvd, in the City of White Plains, in the County of Westchester, Courtroom 1203, State of New York, on the 7th day of January 2009 at 9:30 o' clock on the forenoon of that day or as soon thereafter as counsel may be heard, why an

ORDER should not issue: ordering the stay of the foreclosure sale of the subject real property, 45 Oakland Ave, Mount Vernon, New York, the "subject premises" herein vacating the judgment for foreclosure and sale, and dismissing the case in its entirety pursuant to CPLR 317, on grounds of improper service and lack of personal

jurisdiction, and CPLR§ 3215 (g)(3), lack of standing, and Plaintiff's failure to abide by the terms of the Mortgage and Note agreement; and its further

Ordered, pending a determination or hearing on this motion and entry of an order thereon, let all proceedings on the part of the Plaintiff, Plaintiff's agent and appointed referee, Theodore John Brundage, Esq., and any Marshall or Sheriff of the County of Westchester, including the foreclosure and sale of the subject property scheduled to be auctioned on December 15, 2008 be STAYED.

SUFFICIENT CAUSE APPEARING THEREFORE, LET Overnight service of a confonned copy of this ORDER and the annexations thereto be made upon the Plaintiff's attorney and a copy of this order to the appropriate Referee and any appropriate Marshall or Sheriff of the County of Westchester, if a warrant has been issued by Overnight Mail on or before the 12th day of December, 2008 shall be deemed good and sufficient service.

Dated: White Plains, New York
December 12, 2008

ENTER: "s/".
Orazio R. Bellantoni
Supreme Court Justice, J.S.C.

Notice of Foreclosure Sale December 15, 2008,

Plaintiff's own Referee Oath & Report ($528,086.87) Theodore John Brundage, Esq. 500 Mamaroneck Avenue, Suite 320. Harrison, NY 10528 Rendered to Appellant/Petitioner received 11/10/2008 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 P.562-563).

A Property can only be sold for what it was foreclosed upon. All the tactic have been used by Plaintiff to raise his enrichment in every way possible.

Now the Property that had a mortgage of was 289,994. Could not be Refinance on Summary Judgment for 425,000 with an enrichment to Plaintiff of 240,000 Today's market now would further create a DEFICIENCY: ($528,086.87) AMT ON THIS JUDGEMENT a bad situation for Petitioner due to the Deficiency still further cruel and unusual Punishment no home but a debt for it. All to the enrichment of Fraud and

THEFT BY DECEPTION not only on the Homeowner but by way of our Judicial System.

AFFIRMATION IN SUPPORT OF ORDER TO SHOW CAUSE

Dated: December12, 2008 Chief Clerk Westchester Supreme and County Courts

Jan H. Riley, an attorney duly admitted to practice law in the Courts of the State of New York hereby affirms the following to be true pursuant to CPLR §2106:

1. I am the attorney of record for the defendant, Bernice Perez in the above captioned action, and as such am fully familiar with the facts and
2. circumstances involved herein. The basis of my knowledge is verbal information and documents provided by Ms. Perez.
3. I make this Affirmation in support of the emergency application for motion ordering the stay

4. of sale of the subject real property, 45 Oakland Ave, Mount Vernon, NY vacating the judgment for
5. foreclosure and sale, and dismissing the case in its entirety.
6. I respectfully request immediate judicial review of the instant motion; emergency or immediate relief is necessary because the sale has been set for this Monday, December 15, 2008 without, inter alia, the following:

(a) Plaintiff having a marketable title; and

(b) Defendant Perez being properly served under CPLR§3215 (g)(3); and

Plaintiff having proper standing to bring this matter before the court (CPLR§3215(f); and

(c) Adjudication of Plaintiff's breach of Duty.

7. Pursuant to CPLR§2214 (d), this application is being made to the Hon. Orazio R. Bellantoni, J.S.C.

PLAINTIFF CANNOT TRANSFER TITLE;
DEFENDANT HAS AN APPEAL PENDING

8. Plaintiff has an auction scheduled on this property for December 15 2008. In order for the plaintiff to
9. be able to close on the said premises they must have a marketable title.
10. The Defendant currently has an appeal pending in this action and as a result Plaintiff would no be able to convey the title of the property to a buyer. Plaintiff cannot move forward with closing on the premises pending the outcome of the Defendant's
11. appeal. U.S. Bank v Smith, 2005 NY Slip OP 50456U (N.Y. Sup. Ct.2005).
12. Thus it is improvident to move forward with an auction if a closing is impossible.

MOTION SERVICE OF PROCESS ON DEFENDANT IS DEFECTIVE

13. Plaintiff's single cause of action is based upon nonpayment of an alleged contractual obligation

14. and thus Plaintiff must comply with to CPLR§3215(g)3.

15. Defendant contends Plaintiff has failed to comply with CPLR§3215 (g)3.

16. There is no postal record that Plaintiff complied therewith, submitting only and affidavit from Plaintiff's process server regarding the alleged Summons and Complaint (See EXHIBIT B); we respectfully request that this Court require Plaintiff to provide further proof that they complied with CPLR§3215 (g) 3.

17. Thus, upon information and belief, Plaintiff has failed to serve the Summons herein pursuant to CPLR §3215 (g)3.

18. If a sale were to be held, it would have to be set aside as, where a party to the foreclosure action was not properly served with the Summons and Complaint, Report of the Referee, the Judgment of

Foreclosure and Sale, and the Notice of Sale, such set aside is required. Pole-Tek Indus v. Panzarella, 227 App Div. 2d 643 NYS2d 289 (4th Dept. 1996).

19. Plaintiff, WELLS FARGO BANK MINNESOTA alleges that it was the mortgagee of the subject premises at the time this action commenced, July 17, 2003. However, there is no valid record of an Assignment of Mortgage from the Original mortgagee FIRST ALTERNATIVE MORTGAGE (See Mortgage Control No. 420582426 annexed Exhibit C) to the plaintiff WELLS FARGO BANK MINNESOTA. On March 2, 2003 an alleged assignment was recorded with the Westchester County Clerk. However, although the document is notarized, there is neither signing date nor effective date on the actual assignment. (See Control No 430870131 annexed at Exhibit D).

Thus, there is no way to know when this alleged assignment became effective, if at all.

Further, there is a portion of the alleged assignment that states that the original mortgage was executed on December 28, 2001 and was recorded with the Westchester County Clerk's office on March 8, 2002, and there is apparently, a notary public who notarized this assignment on December 28th of 2001. Yet, how could a document that was notarized on December 28th in 2001, be able to attest to the fact that the original mortgage would be registered with the Westchester County Clerk on March 8th of 2002? That would appear to be either fraudulent or grossly inaccurate, either rendering the document ineffective or unrecordable.

On March 12, 2004, almost a year after the commencement of this action, another alleged assignment was registered with the Westchester County Clerk's office.

(See Assignment Control No 440340539 annexed at Exhibit E).

The first problem with this alleged assignment is that. Because the first alleged assignment (Exhibit D) is suspect, any assignment thereafter is invalid.

> In the first alleged assignment (Exhibit D), FIRST ALTERNATIVE MORTGAGE CORP. allegedly assigned the mortgage to OPTION ONE MORTGAGE CORP and in the second assignment (Exhibit E) OPTION ONE MORTGAGE CORP. attempts to reassign that mortgage to WELLS FARGO.

If the assignment to OPTION ONE MORTGAGE CORP is suspect then we would argue that they cannot convey the mortgage to another party, thus the second assignment would be rendered invalid as well.

Notwithstanding the above, if WELLS FARGO BANK MINNESOTA, did, in fact, have standing to sue under the

first assignment (Exhibit D) as they allege, why would they need to re-assign the mortgage in the midst of the lawsuit? The second attempted reassignment only gives further strength to our arguments that Plaintiff was not only without standing to sue, but that the Plaintiff's assignment practices are highly suspect, invalid and potentially fraudulent.

Your affiant respectfully submits that WELLS FARGO BANK MINNESOTA failed to produce the assignment of mortgage ownership documentation as of the commencement of this action and still has not produced an assignment of mortgage proving ownership.

Accordingly, Plaintiff clearly didnot have an ownership interest in the subject mortgage at the time of filing.

The Court of Appeals case law makes it abundantly clear that "[s]tanding to sue is critical to the proper functioning of the judicial system. It is a threshold issue to sue."Saratoga County Chamber of Commerce, Inc. v

Pataki. 100NYS2d 801,812(2003), cert. Denied US 1017 (2003), See also Household Finance Realty Corp. of New York v. Wynn, 19 AD3d 545 (2d Dept 2005); Sears Mortgage Corp. v Yahhobi, 19 AD3d 527 (2d Dept 2005); U.S. Bank Trust Nat. Ass'n Trustee v Butti, 16 AD3d 408 (2d Dept 2005);First Union Mortgage Corp. v Fern 298 AD2d 490 (2d Dept 2002);Village Bank v Wild Oaks Holdings, Inc., 196 Ad2d 812 (2d Dept 1993).

Your affiant respectfully submits that since WELLS FARGO BANK MINNESOTA is without ownership right of the note and mortgage at the time of the commencement of this action, the Plaintiff (s) has/have failed to establish the fact(s) constituting a viable claim against the Defendant as required by CPLR§3215 (f) See Fappiano v City of New York 5AD3d 627, 774NYS2d 773; Green v Dolphy Construction co., Inc., 178 AD2d 635, 590 NYS2d 238; see also, Gagen V Kipany Production Ltd., 289 AD2d844, 735 NYS2d 225; Dyno v Rose, 260 AD2d

694, 687 NYS2d 497; Feffer v Malpeso, 210 AD3d 60, 619 NYS2d 46.

26. Language in the assignment purporting to make it retroactive is insufficient to establish Plaintiff's ownership interest at the time the action was commenced (Interstate Investments, LLC, Home Loans, Inc. v Hovanec, 15 Misc 3d 1115 [A] [2007]; see Interstate Investments, LLC, Home Loans, Inc. v Taylor, 17 Misc 3d 595 ([2007]) Indeed, foreclosure of a mortgage may not be brought by one who has no title to it (Kluge v. Fugazy, 145 AD2d 537 [2d Dept 1988]).

27. This Court has previously held that an assignment of a mortgage retroactive to a date pre-commencement of the action does not confer standing, Greenpoint Mortgage Funding v Cervantes, Index No. 5065/08, decided August 13, 2008. See also Wells Fargo v. Marchione, Index No. 24456/07, decided February 14, 2008; also see, Deutsche Bank v Lopriore, Supreme

Court Westchester (Loehrm J). Index No 11549/2007, decided August 8, 2008.

MERITORIOUS DEFENSES: BREACH OF DUTY; PLAINTIFF FAILED TO PROPERLY SERVICE LOAN

29. At the time this action was commenced the Defendant had only been late on two mortgage payments. She had paid her mortgage on time, every month except for those two incidents (which were included and repaid pursuant to agreement with Plaintiff [See below][See defendant's affidavit]} payments well over a year before this action commenced.

30. Regardless of her timely payments, for reasons unknown to the Defendant, she was told by Plaintiff that she was in default on her mortgage. She provided Plaintiff with documentation of payments, and Plaintiff refused to accept documentation and demanded she enter into a repayment plan to payback the payments, she allegedly missed.

31. Nonetheless, she entered into a repayment plan to re-pay the months for which Plaintiff alleged default, though she had documentation of payments. Plaintiff continued to tell Defendant that she was not making her regular mortgage payments not the "re-payment" payments.

32. In spite of Defendant being current, soon after Plaintiff filed for foreclosure.

33. Plaintiff then erroneously served Ms. Perez's tenant, Mr. Luis Mendex, allegedly on behalf of Ms. Perez, and he immediately moved out of the premises because he was scared she would lose the house and leave him homeless.

34. Since that time, Ms. Perez has been unable to secure a tenant because of the foreclosure action on her house.

35. As a result she has lost a significant amount of money: Five and a half years of rent, totaling 95,700.00. Ms Perez is an elderly, retired woman who relied heavily on the rental income from her tenant and has, thus, been forced in the position in which she now finds herself.

COURT OVERLOOKED OR IS MISSING CRUCIAL DOCUMENTS; DISCREPANCIES IN DATES OF DOCUMENTS AND OR LACK OF DOCUMENTATION OF CRUCIAL MOTIONS

36. In Plaintiff's Judgment of Foreclosure and Sale, we ressspectfully would call attention to overlooked or missing documents. The Hon. Orazio R. Bellantoni, in his order, stated that he considered "Defendant's Affidavit 's in Opposition dated July 14, 2008 and July 17, 2008.' (Exhibit omitted).

37. The Defendant submitted an Affidavit in Opposition which was stamped by the Westchester County Clerk's Office on July 15, 2008, and signed on July 14, 2008 (Exhibit omitted). Yet, the motion is also not listed among the papers in the case with the Westchester County Clerk. (See Exhibit F).

38. More importantly, the Defendant submitted an Answer in response to Plaintiff's motion request for Summary Judgment that was stamped by the

Westchester County Clerk's Office on May 15, 2008. (Exhibit omitted). This affirmation is not only not referenced as being considered by the Hon. Bellantoni, but is also not listed among the papers in this case with the Westchester County Clerk. (See Exhibit F).

39. Although this could potentially just be a clerical error, we need the court to examine the discrepancies further as these documents were and are crucial components to the Defendant's defense and it respectfully appears hat these documents could have not only been overlooked but have not been registered with the Westchester County Clerk's Office.

40. Your affiant respectfully requests that the Court vacate the default judgment as Courts typically favor a resolution of disputes on the merits. See Pabone v. Jon-Bar Enterprises Corp., supra.

41. No previous application has been made to this or any other Court for the relief requested in this application.

42. An order to show cause is sought rather than proceeding by notice of motion because there has been a breach of duty on the Plaintiff-Mortgagees part which gave rise to the unintentional default.

43. If the Court does not grant the requested Order annexed hereto, Defendant will, not only be evicted but lose her interest of the Real Property with all that she invested, including substantial capital improvements without an opportunity to appear and be heard in court, but also, the Plaintiff may take the property thereby constituting unjust enrichment.

44. Based on the foregoing, your affiant respectfully requests that the Court treat this application as an emergency.

WHEREFORE, I pray for an order vacating the default judgment, staying the sale of the subject real property, 45 Oakland Avenue, Mount Vernon, New York, dismissing

the case in its entirety, and for such other and further relief as this Court may deem just and proper.

Dated: White Plains, NY

December 11, 2008

"s/".

Jan H. Riley, Esq.
(Rule 130-1.1) Atty. for Defendant
149 Grand Street, Bar Building
White Plains, NY 10601-4805
Tel: (914) 220-8272
Fax: (914 220-8272 (Not for Service)

TO: Jace McColley, Esq.

Fein, Such & Crane, LLP.

747 Chestnut Ridge Road, Suite 200

Chestnut Ridge, New York 10977

Respondent Affirmation In Opposition to Order to Show Cause December 30, 2008 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 .P 526-557).

Petitioner Attorney Jan Riley Reply Affirmation January 6, 2009 to Respondent's Affirmation In Opposition to Order to Show Cause December 30, 2008 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 P.558-561).

Appendix N

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

To commence the statutory time
Period for appeals as of right (CPLR 5513 (a)), you are advised to serve a copy of this order, with notice of entry, upon all parties

PRESENT: Hon. Orazio R. Bellantoni
Justice Of The Supreme Court

Wells Fargo Bank, Minnesota, National Associations, As Trustee for Registered Holders of Option One Mortgage Loan Trust 2002_A Asset-Backed Certificates, Series 2002-A, WITHOUT RECOURSE

Plaintiff

V

Short Form Order

Index No. 11365/03

Decision Date: 1/7/09

Bernice Perez, et al.,

Defendant s

Defendant Bernice Perez moves for an order, pursuant to CPLR 317 and 3215 (g) (3), staying the foreclosure sale of the subject real property at 45 Oakland Avenue, Mount Vernon, New York, vacating the judgment of foreclosure and sale, and dismissing the case in its entirety on the grounds of improper service, lack of personal jurisdiction, lack of standing and plaintiff's failure to abide by the terms of the mortgage and note agreement.

The following papers were read:

Order to Show Cause- Affirmation in Support of 1-9

Jan H. Riley, Esq.- Affidavit in Support of Bernice Perez-Annexed Exhibits A-F.

Affirmation in Opposition of Richard A. Gerbino, Esq. 10-14-Annexed Exhibits A-D.

Reply Affirmation of Jan Riley, Esq. 15

Upon the foregoing papers it is hereby ORDERED that the motion is granted to the extent that a traverse hearing shall be held to determine if service upon

defendant Bernice Perez, pursuant to CPLR 308 (2) and 3215 (g) (3), was properly effectuated.

See Akler v. Chisena, 40 AD3d 559 (2nd Dept. 2006), County of Nassau v. Letosky, 34 AD3d 414 (2nd Dept 2006, and Mortgage Access Corp v Webb, 11 AD3d 592 (2nd Dept. 2004); see also County of Nassau v Yohannan, 34 AD3d 620 (2nd Dept 2006) and O' Connell v Post, 27 AD3d 630 (2nd Dept 2006).

All other requested relief is denied.

Plaintiff is directed to file a hearing note of issue within twenty (20) days after entry of the instant order. Upon filing of a hearing not of issue a traverse hearing will be scheduled by the Central Calendar Part.

It is hereby further ORDERED that the temporary restraining order in effect since December 12, 2008 staying the foreclosure sale of 45 Oakland Avenue, Mount Vernon, New York is continued pending the determination of this action.

Dated: April 2, 2009

White Plains, New York

"s/".

Orazio R. Bellantoni

Hon. Orazio R. Bellantoni

Justice of the Supreme Court

Jan H. Riley, Esq.
Attorney for Defendant Bernice Perez
149 Grand street
White Plains, New York 10601-4805

Fein, Such & Crane, LLP
Attorneys for Plaintiff
747 Chestnut Ridge Road, Suite 200
Chestnut Ridge, New York 10977-6216

Did Your Hon. Err in re-opening this Judgment and failed to fully address investigate the critical issues below in this matter :

pursuant to CPLR 317 and 3215 (g) (3), staying the foreclosure sale of the subject real property at 45 Oakland Avenue, Mount Vernon, New York, vacating the judgment of foreclosure and sale, and dismissing the case in its entirety on the grounds of improper service, lack of personal jurisdiction, lack of standing and plaintiff's failure to abide by the terms of the mortgage and note agreement **All but choose only to:** ORDERED that the motion is granted to the extent that a traverse hearing shall be held to determine if service upon defendant Bernice Perez, pursuant to CPLR 308 (2) and 3215 (g) (3), was properly effectuated. See Akler v. Chisena, 40 AD3d 559 (2nd Dept. 2006), County of Nassau v. Letosky, 34 AD3d 414 (2nd Dept 2006, and Mortgage Access Corp v Webb, 11 AD3d 592 (2nd Dept. 2004); see also County of Nassau v Yohannan, 34

AD3d 620 (2nd Dept 2006) and O' Connell v Post, 27 AD3d 630 (2nd Dept 2006).

All other requested relief is denied.

Appendix O

Appellate Division-Second Department

Wells Fargo Bank Minn., Natl. Assn. v Perez

2010 NY Slip Op 00956

Decided on February 9, 2010.

Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

This opinion is uncorrected and subject to revision before publication in the Official Reports.

Supreme Court of the State of New York

Appellate Division-Second Department

REINALDO E. RIVERA, J. P.
HOWARD MILLER
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2008-09852

(Index No. 11365/03)

[*1] Wells Fargo Bank, Minnesota, National Association, etc., respondent,

v

Bernice Perez, appellant. Bernice Perez, Mount Vernon, N.Y. appellant, Pro se

Fein, Such and Crane, LLP, Chestnut Ridge, NY (Michael S. Hanusek of Counsel), for respondent

DECISION & ORDER

In an action to foreclose a mortgage, the defendant appeals from a judgment of foreclosure and sale of the Supreme Court, Westchester County (Bellantonio, J.), and dated September 24, 2008, which, inter alia, directed the sale of the subject premises.

The plaintiff was awarded summary judgment in this action to foreclose a mortgage held on property owned by the defendant and located in Mount Vernon, Westchester County. This Court affirmed the order awarding summary judgment (*see Wells Fargo Bank Minn., Natl. Assn. v Perez, 41 AD3d 590, 590*). Thereafter, the plaintiff moved for a judgment of foreclosure and sale. The defendant opposed the motion. The Supreme Court entered a judgment of foreclosure and sale dated September 24, 2008.

"As a general rule, the law of the case doctrine precludes this Court from re-examining an issue which has been raised and decided against a party on a prior appeal where that party had a full and fair opportunity to address the issue"(*Frankson v Brown & Williamson Tobacco Corp., 67 AD3d 213, 217; see Allison v Allison, 60 AD3d 711, 711*). The doctrine forecloses re-examination of an issue "absent a showing of subsequent evidence or change of law" (*J-Mar Serv. Ctr., Inc. v Mahoney, Connor & Hussey*, 45 AD3d 809, 809, quoting Matter of Yeampierre v Gutman, 57 AD2d 898,899). Here, the defendant had a full and fair opportunity to address the issues decided against her on the prior appeal. Moreover, she provides no basis for re-examining those issues.

The defendant waived her claims that the plaintiff lacked standing to bring the instant foreclosure action and that she was not properly served in the action by failing to raise those claims in her answer or in a pre-answer motion to dismiss (*see Countrywide Home Loans, Inc. v Delphonse, 64 AD3d 624, 625; HSBC Bank, USA v Dammond, 59 AD3d 679, 680; Werlls Fargo Bank, Minn., N.A. Mastropaolo, 42 AD3d 239, 241-243; see also CPLR 3211 [e]; Matter of Parkside Ltd. Liab. Co., 294 AD2d 582, 583; Hatch v Tu Thi Tran, 170 AD2d 649, 650*). [*2]

The defendant's remaining contentions are either without merit or not properly before this Court.

RIVERA, J.P, MILLER, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:

"s/".

James Edward Pelzer

Clerk of the Court

_X__CPLR5601 (a) Dissents on the law at the Appellate Division:

Reinaldo E. Rivera J.P., Howard Miller, John M. Leventhal, Cheryl E. Chambers, JJ., concur 4 Judges out of 9 Judges

Difference between majorities centered on conflicting interpretations of law (Compare , Scheer v. Koubek)69 NY2d 983 consequent Conclusion as to whether Wells Fargo made out a Prima Facie Case: Legal Question.

Matter of Gardstein v Kemp & Beatley, Inc.

Cite: Fraudulent & Negligent Misrepresentation: Misrepresentation Act

1967. (Derry v. Peek) (Hedley Byrne v. Heller [1964] A.C. 465; Esso Petroleum Co. Ltd. V. Mardon [1976] Q.B; Krakowski v. Eurolynx Properties Ltd (1995) 183 CLR 563.

Facile Princeps: The evidence in the Appellate Div. Appendix 2008-0982 was put forth in my defense to continue to show Respondent never rendered truthful, proof, evidence to support, substantiate their claim entitlement for Foreclosure & Sale, other Decisions and Orders by law outlined in this entire matter.

From the initiation of this proceeding and the continuance in Plaintiff's favor is actual malice. Plaintiff have failed to make full and accurate statement of the true facts to these courts, to be Granted Summary Judgment, and the further seeking, obtainment of Foreclosure and Sale. All which was by misrepresented evidence, bad faith and perjury.

Dispute between majority and dissent focuses on (Sufficiency) not (Weight) of the Evidence to support finding of corporate oppression of shareholder:

Cite: Legal Question. Matter Merrill v Albany Med. Center Hosp. Dissent predicated On unpreserved issues. Matter of Cindy M.G. v. Michael A.

Weigh of the evidence: The evidence presented by Petitioner Res ipsa Loquitur (speaks for itself) and a new Trial should be granted.

The Courts by Respondent's non-documentations or Falsified Documentation for their action, contradictory actions, behavior, conflicting allegations depending on what

court Respondent is in have been forced to make misguided evidentiary rulings merely based on who Plaintiff is and a remand for a new trial is needed. Creditability is for a Jury.

Difference between majority and dissent based on differing view of underlying facts, not applicable legal standard]; Karger, Powers of the New York Court of Appeals § 6:15,, at 203-207 [rev 3d. ed]).

PETITIONERS ANSWER:

> In deciding a case a court should find facts on the basis of the evidence presented then apply the **law** to those facts. The evidence presented by Petitioner throughout this matter prove Respondent never had TRUE entitlement, justification for obtainment of any Order Decision, Nor commencement of this proceeding in these court of Law.

Questionable Mortgage Assignments-INTRINSIC FRAUD-That directly involves the issues in a lawsuit. Facts

learned from a document itself, not from outside information about it.

Constitutional Question CPLR 5601(b)(1): VII Amendment Right

Whether a substantial constitutional question is presented is a determination that must be made on a case by case basis. The Court has examined the nature of the constitutional interest at stake, the novelty of the constitutional claim, whether the argument raised may have merit, and whether a basis has been established for distinguishing a State Constitutional claim from a Federal constitutional claim.

Enlargement of Time & Plaintiff's Cause to Appellate Division

Plaintiff's/Respondent Attorney's Michael S. Hanusek, Esq. ., Fein, Such, Kahn & Shepard, P.C. Request for an Enlargement of time. Plaintiff had 6 months awareness of this impending Appeal.

Plaintiff did not request an Enlargement of Time prior during the 30 days allotted under Appellate(Rules § 670.10.3[g][3])(Rules §670.8[b])due 30 day after service of the Appellant's Brief marked "To Be Submitted" and Perfection of Appeal Dated April 20, 2009.

Such Perfected Appeal by Appellant-Defendant (Perez) was Overnight Expressed to Plaintiff and received by Plaintiff April 21, 2009 to meet my own deadline.

Plaintiff-Respondent's Brief was due no later than May 21, 2009 to Appellant-Defendant Perfected Appeal April 20, 2009.

Plaintiff's request/notification to Appellant-Defendant Perez was received Certified Mail May 29,2009 (#7160 3901 9848 2794 9739) regarding requested Enlargement of Time.

Plaintiff request was not even rendered to the Appellate Division until via letter dated May 22, 2009 faxed to the court one day after such time had expired.

Plaintiff Wells Fargo/and or their attorneys cannot make at the instance of the perfection of the Appeal and for the benefit of Plaintiff only, and without prior notice to, or argument by Appellant-Defendant relating to this court action taken by one(Perez) without prior notice of temporary or emergency relief.

Plaintiff's Cause:

Plaintiff's own designated commencement request due date for May 26, 2009 due to "extreme, oppressive work schedule handling an extraordinary amount of contested foreclosure matters" this is not sufficient cause to have warranted such temporary or emergency relief extension of an additional 30 days.

Plaintiff should have provide some other newly contested foreclosed families another 30-60 days to stay in their home to address and provided closure to this pending matter of 5 ½ years. Newly contested Foreclosures would still be an on going matter in another 30 days.

Plaintiff who maintain 3 working offices with a multitude of attorneys at their disposal who have proclaimed familiarity with this matter of Plaintiff-Respondent and Appellant-Defendant throughout this 5 ½ years. Such as: Attorney Greg P. Tabakin, Esq., Mikelle V. Komor, Esq., Samit G. Patel, Esq. Jace McColley, Esq., Margaret J. Cascino, Esq. and now Michael S. Hanusek, LLP., should have been able to meet such deadline. Had Appellant-Defendant missed deadline to Perfect such Appeal Plaintiff-Respondent would not have extended such courtesy to me but however, demanded; I defaulted, out of time, I lost.

Plaintiff's Atty. Michael Hanusek Brief , Argument P. 3 Docket No 2008-09852 Appellate Div. Dated. June 22, 2009.

" Defendant's attack on her default under the Mortgage was the subject of a Motion for Summary Judgment by Plaintiff which was granted by the Trial Court."

"That the granting of Summary Judgment is the procedural equivalent of a trial and results in a final judgment on the merits."

Citing: Collins v Bertram Yacht Corp 42, NY2D 1033, 399NYSD 202.

Defendant has had her "trial', she lost. Appeal from Summary Judgment, she lost.

In deciding a case a court should find facts on the basis of the evidence presented then apply the **law** to those facts. The evidence presented by Petitioner throughout this matter prove Respondent never had

TRUE entitlement, justification for obtainment of any order Decision, commencement of this proceeding in these court of Law.

Westchester County Supreme Courts Index #11365/03.

Hon. Linda S. Jamieson, Granting of Summary Judgment December 16, 2005

Hon. Orazio Bellantonio, Granting Foreclosure and Sale September 24,2008

The Districts courts remain bound by the rules of evidence. The evidence provided by Petitioner *Res ipsa Loquitur* speaks for itself and further Fully weakens and fully defeats the plaintiff's case

Plaintiff's Atty. Michael Hanusek Brief , Argument P. 9 Docket No 2008-09852 Appellate Div. Dated. June 22, 2009.

" Defendant's attack on her default under the Mortgage was the subject of a Motion for Summary

Judgment by Plaintiff which was granted by the Trial Court."

"That the granting of Summary Judgment is the procedural equivalent of a trial and results in a final judgment on the merits."

Citing: Collins v Bertram Yacht Corp 42, NY2D 1033, 399NYSD 202.

Defendant has had her "trial' , she lost. Appeal from Summary Judgment, she lost.

PETITONERS ANSWER: Petitioner's many request for a 'Trial" with a Jury of my Peers was denied because others would see that Plaintiff does not have a Case. What petitioner experienced was a "Circus" (or a "old time lynching", if I may- Freedom of Speech) run by Wells Fargo (Ringmaster) and an entourage of his conspirators. Plaintiff's Attorney & Petitioner's Attorneys by the Oath they took should not put their careers in jeopardy an obligation to provide a strong honest defense for the client

they serve and not feed their hands from the "Left and Right"

Footnote: Summons Complaint, Request for Motion to Renew Summary Judgment, Insert info re: March 4, Assignment –Jan Riley .

Plaintiff's Atty repeatedly states appellant lost; But how did Appellant lose-by Plaintiff's attorney's opposition into the investigation of Legal Standing , The Mortgage Assignments- Why- Fraudulent and manipulate. and tactics of the said proceedings; the attempted wearing down of petitioner by mental anguish and malice. Petitioner responded to all Respondent's fraudulent, false allegations, summons thru and by an attorney until forced to precede Pro se due to Prosecutorial Misconduct, mistrust and malicious Prosecution.

Baseless prosecution can ruin lives, destroy careers and cost innocent people thousands of dollars just to prove their innocence. Malicious prosecution can cause

immense emotional or mental suffering such as anxiety, depression and post traumatic stress disorder.

Wells Fargo will spend thousands of dollars rather than admit that they have made an error by any means in their pursuit to forcibly, fraudulently taking of homes. The concealment and falsied evidence false allegation, false Prosecution, false testimony by Respondent's Attorneys and their Motions.

The initiation of this proceeding and the continuance in Plaintiff's favor is actual malice who have failed to make a full and accurate statement of the true facts to these courts, which was by misrepresented evidence, bad faith and perjury.

The Courts by such falsied evidence have been forced to make misguided evidentiary rulings and a remand for a new trial is needed. Creditability is for a Jury. Under Fraud

The evidence presented by Petitioner throughout this matter prove Respondent never had TRUE entitlement, justification for obtainment of any order Decision, commencement of this proceeding in these court of Law.

Westchester County Supreme Courts #11365/03

Hon. Linda S. Jamieson Summary Judgment

Hon. Orazio Bellantonio, Foreclosure & Sale

Why? Because the courts automatically think the homeowner is wrong (Some are but not all) and Big Business is right

Which can provide helpful clear understanding in this matter and the true determination of facts and issues.

The Districts courts remain bound by the rules of evidence. The evidence provided by Petitioner *Res ipsa Loquitur* speaks for itself and further weakens the plaintiff's case

However, I was respectful of the decision and discretion of the court regarding this request by Plaintiff.

Even after the additional 30 days granted extension Plaintiff failed to fully provide documentation address, verify or dispute, defeat, with validating evidence issue before this Court outlined in Appellant's brief marked "To Be Submitted" and to further authenticate the validity of their Legal Standing and justify Plaintiff's action.

It's true as Plaintiff stated all arguments and defenses by both parties are "Critical" to this Appeal before the Court. It is therefore 'Critical" to this Appeal all allegations and Defenses be finally put on the table and fully addressed so as nothing can be mis-construed of what was said and done once and for all in this matter.

1. Plaintiff-Respondent Ex-Parte' Request of 15 mins. to Argue time all defenses should have been openly rendered and expressed in black & white in Plaintiff-Respondent Brief by the additional 30 day of Enlargement of Time.

2. Plaintiff's avoidance to openly validate and authenticate in black and white the issues raised in Appellant Brief It is time for Plaintiff to stop throwing
3. rocks and hiding their dirty hands and to try to by-pass this Appellate Division to return to their "comfort Zone" of the Westchester County Supreme Court to where all these fraudulent actions commence.
4. Such Ex-Parte' Request would also undermine and be out of the scope of allowing further rebuttal, dispute/defense of Appellant-Defendant(Perez) or others parties who might later become involved (Order to Show Cause) still pending who outlined all allegations in Appellant Brief Marked "To Be Submitted to which Plaintiff have not addressed or defeated.
5. Further to loose the enslavement of this matter on me and my family and this Judicial System.

The court retrain's the right to deny oral arguments of any cause (Rules 670.20[d]}.

Plaintiff's Request now to argue 15 minutes without the presence of (Perez) after Appellants Brief to be Submitted should be denied.

It is proven throughout these proceedings Plaintiff actions allegations and defenses differ in different surroundings Courts.

This is another tactic against Appellant-Defendant by Plaintiff to primarily accomplish a purpose for which this matter is not designed is subject to liability to the other (Perez) for harm caused by the abuse of process.

The Court has stated that questions that have been "clearly resolved against an appellant's position*** lack the degree of substantiality necessary to sustain an appeal As of right under CPLR 5601(b) (1)" Matter of David A.C. 43 NMY2d 708, 709.

Such issues was never clearly resolved

Appellant's (Perez) Signature in Appellant's Brief dated April 20, 2009 constitutes a certification presentation of the Appellant-Defendant (Perez) paper or the contentions therein are not, is not frivolous (22NYCRR 130-1.1=a;

§670.2[I]}. Indeed Factual and such statements and validating evidences have repeatedly been put forth to Plaintiff and Courts and speaks for itself. I stand firmly on all Appellant-Defendant allegations and Defenses. I have not lied.

The doctrine forecloses re-examination of an issue "Absent a showing of subsequent evidence or change of Law" (J-Mar Serv. Ctr,. Inc. v Mahoney Conner & Hussay, 45 AD3d 809, 809, quoting Matter of Yeamierre v Gutman, 57 AD2d 898, 899).And rested on an Independent non constitutional ground. Matter of Fossella v. Dinkins.

Direct Involvement: Karger, supra § 7:8, 7-9-7:10, at 231-243:

The Legal & Constitutional issues were raised and preserved: Judge Linda S. Jamieson 1st Decision March 22, 2004. (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2P. 765-767).

"The Court is not able to determine if Respondent was justified in seeking to hold the

Petitioner in default when the instant action was Commenced."

Matter of Schulz v State of New York, 81 NY2d 336,344; Matter of Shannon B., 70 NY2d 458, 462. Matter of Skenesborough Stone, Inc. v. Village of Whitehall, 95 NY2d 902.

Subsequent Evidence :

SUBSTANTIALITY: :Karger, supra § 7:5, at 226-228. The (Appellate Division –Second Department 2008-09852) stated: "Moreover, Appellant provides no basis for re-examining those issues". FALSE

The Appellate Division(see Wells Fargo Bank Minn., Assn. v Perez, 41 AD3d 590, 590) affirm decision

Dated June 25, 2008 to 1st Appeal 2006-851 of the lower court Order & Decision.

Extrinsic Fraud; Fraud in Fact; Actual Fraud; Fraud in the Inducement; Plaintiff's Repayment Agreement, Intrinsic Fraud Mortgage Assignment; Fraud in the Factum; Petitioner's June 2003's Payment; Fraud upon the Judicial System to Undermine the integrity of this Judicial System./Misrepresentation Concealment

Respondent's Attorney Mikelle V. Komor own testament deceptively caused Appellate Division –2nd Department Decision & Order May 11, 2007 to Affirmed Supreme Court, Hon. Judge Linda S. Jamieson Decision for Summary Judgment December 16, 2006.

In Respondent Brief on prior Appeal 2006-851 August 9, 2006 P. 16.17 Respondent's Attorney Mikelle V.Komor own testament all needed to be surrendered for Summary Judgment was ownership rights " Legal Standing" by

Mortgage Assignments # 440340539 Certified 12/10/2009. Respondent's Right to sue questionable must be decided to resolve this Controversy.

The Appellate Second Department- CPLR§6516 NOTICE OF PENDENCY-Thus, we hold that an expired or canceled notice of pendency may not be refilled prior to Filing for Foreclosure & Sale.

Cite: Martini v. Charles Rogers.

Cite: Second Department Affirm: Nassau County Supreme Court Justice Roy S. Mahon in EMC Mortgage Corp. v. Stanley Stewart.

The Appellate Second Department -recognize an exception to the 'no second chance ' rule (Notice of Pendency) where a plaintiff can files successive notices of pendency in a mortgage foreclosure action, in which the filing of a notice of pendency is mandatory (New York Real Property Actions and Proceeding Law, §1331). Cite: Slutsky v Blooming Grove Inn, Inc. 542 N.Y.2d 721 (1989),

and Robin v. Goldstein, 320, N.Y. S. 2d 553 (1971), the second Department held that a lis pendens maybe filed prior to the entry of final Judgment even where the original lis pendens has been cancelled.

Legal Standing, subject matter jurisdiction, issue whether declaratory judgment action is proper vehicle to test constitutionality of legislative enactment. Kerrigan v Kenny 64 NY2d 1109.

Mortgage Assignment(secured debt)that lack possession or formal Assignment of Note (unsecured debt)cannot force Sale of the property to satisfy debt and thus be Foreclosed upon. Mortgage Assignment must be accompanied by Note.

The Supreme Court of the United States has stated:

"In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues'.

There are a number of requirements that a plaintiff must establish to have standing before a federal court. Some are based on the case or controversy before a federal court. Some are based on the case controversy requirement of the judicial power of Article Three of the United States Constitution, § 2,c;.1. As stated there, "The Judicial Power shall extend to all Cases...[and] to Controversies.

"The requirements that a plaintiff have standing to sue is a limit on the role of the Judiciary and the Law of Article III standing is built on the idea of separation of powers

[11] Federal courts may exercise power only 'in the last resort, and as a necessity'. [12}

The American doctrine of standing is assumed with the case of Frothingham v. Mell,262 U.S. 447 (1923), Legal standing rests in Fairchild v. Gughes, (1922) authorized by Justice Brandeis.

Following a trend originally initiated by US District Judge Christopher Boyko, Northern District of Ohio in Federal Court.

Cited: Ohio Supreme Court Wells Fargo v. Jordan.

The 8th District Court of Appeals (Cuyahoga County) ruled in June 2010 that banks, loan servicers and trusts did not have standing to pursue foreclosure of homes in Ohio if they could not prove that they owned the mortgage note at the time of filing of the complaint.

In Wells Fargo v. Jordan Judge Frank D. Celebrezze, Jr. writing for a unanimous panel of the 8th District held that in order to bring a lawsuit in the plaintiff must have a genuine interest in the subject matter of the lawsuit.

A party lacks standing to invoke the jurisdiction of a court unless he has, in an individual or a representative capacity, some real interest in the subject matter of the action. State ex rel. Dallman v. Court of Common Pleas

(1973), 35 Ohio St. 2d 176, 298 N.E. 2d 515, syllabus.

The eleventh Appellate District has held that "Civ.R 17 is not applicable when the plaintiff is not the proper party to bring the case and thus, does not have standing to do so. A Person lacking any right or interest to protect may not invoke the jurisdiction of a court.' Northland Ins. Co. V. Illuminating Co., 11th Dis. Nos. 2002-A-0058 and 2002-A-0066, 2004-Ohio-1529 at ¶17.

The court also noted that Civ. R. 17 (A) was not applicable unless the plaintiff had standing to invoke the jurisdiction of the courtin the first place, either in an indidividual or representative capacity, with some real interest in the subject matter. Civ. R. 17 only applies if the action is commenced by one who is sui juris (possessing full civil and political rights) or the proper party to bring the action.'

Travelers Indem. Co. v R. L. Smith Co. (Apr. 13, 2001), 11th Dist. No 2000-L-014." Wells Fargo Bank, N.A. v.

Byrd, 178 Ohio App.3d 285, 2008-Ohio-4603, 897 N.E. 2d 722."

The Court went on to hold: " If Plaintiff has offered no evidence that it owned the note and Mortgage when the complaint was filed, it would not be entitled to judgment as a matter of law".[28]

Further Ohio Law reco Jus Terttii: Federal Civil Procedure 103.4 C.J. S Actions §§ 57-63. The right of a third party.

"[N] o defendant in an action of trespass can plead the jus tertii-the right of possession outstanding in some third person-as against the fact of possession in the plaintiff."

Cite: R.F.V. Heuston, Salmon on the Law of Torts 46 (17th ed. 1977) Blacks Law Dictionary 8th Deluxe Edition.

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[28] Further Ohio Law recognized that issue of Jurisdiction can be raised by a party in a lawsuit at anytime.

The presumption of common-law jurisprudence that one cannot be harmed by an action that achieves its effect through effects upon others, cannot be ' indirectly' harmed."

Cite: Joseph Vining, Legal Identity 120 (197). Blacks Law Dictionary 8th Deluxe Edition.

PLAINTIFF LACKS STANDING CPLR § 3215 (f):

(d) Adjudication of Plaintiff's breach of Duty. Plaintiff has failed to establish a valid assignment of the mortgage and Note by the owner.

CITED: SUPREME Court of New York, Suffolk County, Judge: Edward D. Burke , J. Decided August 7, 2006 Lasalle Bank National Association, As Trustee C/O Chase Home Finance, LLC, Plaintiff v. Michael Lamy, Joan Lamy, Defendant # 030049/2005.

Only the owner of the note and mortgage and mortgage at the time of the commencement of a foreclosure action may properly prosecute said action.

Cite: Kluge v. Fugazy, 145 A.D. 2d 537, 536 N.Y.S. 2d92; see also, Katz, v Eastville Realty co., 249 A.D. 2d. 243, 672, N.Y.S. 2d 308.

Ownership of both the note and mortgage at the time of the commencement of a mortgage foreclosure action is a necessary element of the Plaintiff's cause of action for foreclosure of the mortgage, entry of a default judgment against the defendant mortgagors and others joined as party defendants is precluded where the plaintiff's ownership interest in both the NOTE AND the mortgage is not ascertainable from the pleadings and the documentation submitted in support of the motion (CPLRT 3215; RPAPL 1321) see Beaton v Transit Facility Corp., 14 A.D. 3d 637, 789 N.Y.S. 2d 314, and the cases cited therein; See also, Morgan v. Bagayoko, 1 A.D. 3 d 582, 767 N.Y.S. 2d 631.

Ownership of the note and mortgage my be established by the lending documents themselves or by

proof that the plaintiff is the owner of the note and mortgage by reason of an assignment of both the note and mortgage by the owner thereof to the plaintiff or by the owner's endorsement of the note and its written assignment of mortgage to the plaintiff. (Not Option One Mortgage)

Cite: Federal National Mortgage Association v Youkelsone, 303 A.D. 2d 546 755 N.Y.S. 2d. 730.

Accordingly, a Plaintiff who is the assignee of the mortgage and the underlying note at the time of the commencement of the action has standing to maintain the action.

Cite: Federal National Mortgage Association v Youkelsone, ibid at 303 A.D. 2d 547, 756 N.Y.S. 2d 462.

However, many courts have held that a nominee of the owner of the note and mortgage, such Mortgage Electronic Registration Systems, Inc. (MERS), may not prosecute a mortgage foreclosure action in its own name

as nominee of the original lender because it lacks ownership of the note and mortgage at the time of the prosecution of the action.

Cite: Federal National Mortgage Association v Burek, 4 Misc. 3d 1030A, 798 N.Y.S. 2d. 346;

Cite: Federal National Mortgage Association v Bastian, 12 Misc. 3d 1182 (A), 2006, N.Y. Misc. Lexis1901, 2006 WL 1985461; see also "MERS' Foreclosures continue to face challenges in Suffolk County Courts', by Sam Weisberg, 5/30/2006 NYLJ20, (Col.2): Challenges to MERS Standing , by Kenneth M. Block and Jeffery R. Steiner, 11/16/05 NYLJ 5 (copl.2); CF., Fairbanks Capital Corp. v. Nagel, 289 A.D. 2d 99. 735, N.Y.S. 2d 13..

To be effective , an assignment of a Note and a mortgage given as security thereof must be made by the owner of such note and mortgage and that an assignment s made by entities having no ownership interest in the note and mortgage pass no title therein to the assignee.

Cite: Matter of Stralem 303 A.D. 2d 120, 758 N.Y.S. 2d 345, and the cases cited therein.

A Nominee of the owner of a note and mortgage may not effectively assign the note and mortgage to another for want of an ownership interest in said note and mortgage by the nominee. Since a note secured by a mortgage is a negotiable instrument, it may be assigned by endorsement provide such endorsement is affixed on the note itself or on a paper so firmly attached thereto to become a part thereof.

Cite: Slutsky v Blooming Grove Inn, Inc. 147 A.D. 2d 208 542 N.Y.S. 2d 721.

One who has been given a written assignment of a mortgage and an assignment of the note by endorsement on the face thereof has standing to maintain a foreclosure action .

Cite: First National Trust Association v Meisels, 234 A.D. 2d 414, 651 N.Y.S. 2d 121.

In addition to the forgoing rules, assignments well established case authorities have held that where a mortgage debt is represented by a bond or other instrument , an assignment of the mortgage without a Commitment of the note or bond for which said mortgage was given as security is a nullity.

Cite; Merritt v Bartholick, 36 N.Y. 44, 34 How. Pr. 129 1 Transc. App. 63;

Cite: Flyer v Sullivan 284 A.D. 697, 134 N.Y.S. 2d 521;

Cite: Beak v. Walts 266 A.D. 900, 42 N.Y.S.2d 652:

Cite: Manne v Carlson, 49 A.D. 276, 63 N.Y.S. 2d 162, supra; CF.,

Cite: Payne v. Wilson, 74 N.Y. 348.

This is so because the mortgage is merely an incident of an collateral security for the debt and an assignment of the mortgage does not pass ownership of the debt itself.

Cite: Luetch-ford v. Lord, 132 N.Y. 465, 30 N.E. 859;

Cite: Smith v. Thompson, 118 A.D. 6, 103, N.Y.S. 336.

The following corollary rule also evolved: One who has received an assignment of the mortgage debt (note or bond) without a corresponding assignment of the mortgage cannot maintain an action to foreclose, since the assignee has no legal interest in the mortgaged premises. Cite: Manne v. Carelson, 49 A.D. 276, 63 N.Y.S. 2d 162.

Accordingly, only the owner of the both the note and mortgage at the time of the commencement of the action may seek the remedy of foreclosure.

The record on the instant application (SUMMONS & COMPLAINT) clearly establishes that the plaintiff's claim of ownership to the mortgage for which foreclosure is herein demanded are without merit . The December 28, 2005 assignment of the mortgage to the Plaintiff , upon which the plaintiff predicates its claims of ownership to the subject mortgage , was made by an entity (OPTION ONE MORTGAGE) which had no ownership interest in

either the note or the mortgage at the time the purported assignment thereof was made. The December 28, 2001 assignment of mortgage is thus invalid. This undated document does not appear to be part of the note itself nor does it appear to be affixed thereto so firmly as to become a part thereof . Instead the endorsement appears to have been prepared (Copied) independently of the note and subsequent to its execution . It is thus not an valid endorsement.

Cite: Slutsky v Blooming Groove Inn, Inc. 147 A.D. 2d 208 542 N.Y.S. 2d 721, supra.

Judge William C. Todd III, Presiding Superior Court of New Jersey.

Cite: Bank of New York v. Michael Raftogainis

Lenders have to prove they hold mortgage & Note.

Decided June 29, 2010 Docket # F7356-09

Ruling: "Bank of New York failed to establish

that it was entitled to enforce the note as of the time the complaint was filed".

Judge Todd stated : "Banks could no longer simply show that mortgage had been assigned to them when foreclosing on a property". "From now on Banks must demonstrate how it owns the Mortgage and Note, the transaction by which they acquired it and have ownership on the date the foreclosure complaint is/was filed'.

The Appellate Division ruling Petitioner did not raise the issue of Legal standing in Pre-Answer.

Petitioner Response: "Never waived claim and such claims, rights should not have been waived, relinquish by any of the three (3) attorneys in their legal expertise retained to defend and protect Petitioner's Rights should have raised all such issues with a vigorous defense.

Summary Judgment re; Appeal 2006-851:

Fed. R. Civ. P. 56 (e) 2005 In discussing this standard, the U.S. Supreme Court stated:

In our view, the plain language of Rule 56 (e) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. In such situation, there can be no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts in material. The moving party is entitled to a judgment as a matter of law" because the nonmoving party has failed to make sufficient showing on an essential element of case with respect to which she has the burden of proof.

Cite: Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (quoting Fed. R. Civ. P. 56 (c)).

"[I]n assessing a motion for summary judgment all justifiable inferences must be drawn in favor of the nonmoving party for '[c]redibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts." Drewitt v. Pratt,999 F.2d 774, 778 (4th Cir. 1993)

(quoting Anderson v. Liberty Lobby, Inc., 477 U. S. 242, 255 (1986). Hence, "[t]he court 'must perform a dual inquiry into the genuiness and materiality of any purported factual issues." 999 F.2d at 778 (quoting Ross v. Communications Satellite Corp., 759 F 2d. 355, 364 (4th Cir. 1985)).

The substantive law identifies facts that are material. Consequently, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.' Anderson, 477 U.S. at

248. "Genuineness means that the evidence must create fair doubt; wholly speculative assertions will not suffice." Ross, 759 F 2d. at 364.

Therefore, in reviewing the evidence, a judge must determine "whether a fair-minded jury could return a verdict for the Petitioner (Perez) on the evidence presented. The mere existence of a scintilla of evidence in support of the Plaintiff's position (Perez) will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Anderson, 477 U.S. at 252. If no genuine issue of material fact exists, the Court has an obligation "to prevent' Factually unsupported
claims and defenses' from proceeding to trial." Felty v. Graves-Humphreys Co., 818 F.2d 1126, 1128 (4th Cir. 1987) (quoting Celotex, 477 US. At 323-24).

Finally, when a party's "state of mind" is a decisive element of a claim or defense, summary judgment is

seldom appropriate because "state of mind" determinations usually depend on the credibility of witnesses of the resolution of conflicting inferences drawn from circumstantial or self-serving evidence. Thacker v. Peak, 800 F. Supp. 372, 376 (S.D.W. Va. 1992) (Citing Charbonnages de France v. Smith, 597 F2d 406, 414 (4th Cir. 1979) and Ross, 759 F.2d at 364. Id. (citing Ross, 759, F.2d at 365

In Respondent Brief on prior Appeal 2006-851 August 9, 2006 P.16,17 Respondent 's Attorney Mikelle V.Komor own testament: "Petitioner made no Payment for June 2003 thus Summary Judgment was granted. (False, Contradictory & Conflicting) (Ref. Court of Appeal & Appellate Div. Appendix Vol.2.P.692-694).Respondent's Attorney Greg P. Tabakin return of June Payment.

(Ref. Court of Appeal & Appellate Div. Appendix Vol.2.P. 667) Petitioner's Carol Mark Mailing of June 2003 Payment.

Attorney Mikelle Komor Testament November 7, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1639-1644) having June payment returned by Attorney's Office and obtaining Summary Judgment which Petitioner Filed Appeal 2006-851.

Result of Casebook Transactions printed 10/14/2008 & 3/30/2009 Westchester County Clerks Office There is still No Notice of Entry by Respondent 's Attorney Mikelle V. Komor or Petitioner's Attorney Patricia A. Mooney which validate never rendered as alleged to Petitioner The Granting of Summary Judgment 12/16/ 2005.

On the other hand, a constitutional argument need not prevail on the merits to support an appeal on constitutional grounds. Rose v. Moody, 83 NY2d 65,69.

__CPLR5601 (b) (2): Constitutional ground: Direct Appeal from the Court of Original Instance .

The only question involved must be the constitutionality of a statutory provision: where issues are involved that must be resolved in addition to the constitutional question the appeal is transferred to the Appellate Division (Jetro Cash and Carry Enters. V. State of New York Dept. of Taxation and Fin. []Town of Brookhaven v, State of New York 70 NY2d 990. Question of statutory interpretation that could be dispositive of constitutional question. New York State Club Assn. v. City of New York, 67 NY2d 717.

The Appellate Division –Second Department 2008-09852) has stated: "the defendant's remaining contentions are either without merit or not properly before this court."

FALSE: The documents and evidence speaks for itself. All points argued are sufficient either in itself or in connection with the other points argued to resolve or should have resolved the entire case.

Thus does not constitute: Granting any decisions constitutionality or legally in this matter in favor of Respondent Wells Fargo.

There is no Character assassination " buried here amid a stream of consciousness attacks on the character of Respondent/attorneys involved," as stated by Respondent's Attorney Michael Hanusek (Footnote(Ref Respondent Brief Appellate Div. under Argument Pg. 3. Dated June 22, 2009) the record, actions and behavior of all remotely connected speaks for itself:

Jan Riley Reply Affirmation Dated (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P.558-561). Regarding attacks and slander on Petitioner.

Appendix P

Opinion #2010-331 Denial Motion Leave to Appeal is final Published/Not Published .Designate any statues, 5601, CPLR 5601(b) 1, CPLR 5601 (b)2.

STATE OF New York

Court of Appeals

At a session of the Court of Appeals Hall in the City of Albany on the sixth Day Of May 2010

PRESENT, Jonathan Lippman, Chief Judge, Presiding

Mo. No 2010-331

Wells Fargo Bank Minnesota,

National Association, &c.,

Respondent,

V.

Bernice Perez, Appellant

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the

part of the appellant herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied with one hundred dollars costs and necessary reproduction disbursements.

"s/".

Stuart M. Cohen

Clerk of the Court

CPLR5601 (d) (2) Final Judgment, order, determination or award seeking review of a prior Appellate decision Order Appeal # 2006-851.

Pursuant CPLR 5501 Review of Summary Judgment December 16, 2005, Supreme Court, Judge Linda S. Jamieson.

What necessary reproduction disbursements cost.:
Petitioner remitted: Appellate Second- Department
Appendix Vol. 1-4
7 Copies of Petitioners Brief
7 Copies of Respondent Brief

State Action Doctrine

28 U.S.C. §1251 Constitution, Amendment II. The Supreme Court shall have original and exclusive Jurisdiction of all controversies between citizens of different States:

> "Because the State has the power to stop the infringement of individual rights, its failure to do so constitutes a state decision to permit the violations.

Court Declared: Denying includes inaction as well as action the omission to protect as well as the omission to pass laws for protection."

The State Action Doctrine- The constitution applies to government of all levels-Federal, State, and local-and to the actions of government officers at all levels.

Court of Appeal Case Law Legal Standing

The Court of Appeals case law makes it abundantly clear that [s] standing to sue is critical to the proper functioning of the judicial system. It is a threshold issue.

Court of Appeal Case Law Summary Judgment Case Law.

The Court of Appeals has noted that even where a party's motion papers in opposition to a motion for summary judgment are "worthless", before summary judgment will be granted to the Wells Fargo such party must establish its prima facie entitlement to judgment as a matter of law (Trepuk v. Frank, 56 NY2d [1982], revsd for reasons stated in op. Of dissent in A.D., 86 AD2d 578, 579 [1st Dept. 1982] See also, Alvarez v. Prospect Hospital, 68 NY2d 320 [1986} Wingrad v. NYU Medical Center, 64 NY2d 851 [1985].

The Court of Appeals stated this succinctly: "before considering whether Petitioner, (Perez} has put forth sufficient proof to defeat Respondent (Wells Fargo/Option One Mortgage) motion for summary judgment, the issue of whether Respondent has established its entitlement of

Motion Order Granting Summary Judgment must first be addressed". (Olan v. Farrell Lines Inc., 64 NY2d 1092, 1093 [1985.

"Where the facts permit conflicting inferences to be drawn, summary judgment must be denied" (Morris v. Lenox Hill Hospital, 232 Ad2d 184-5 [1st Dept. 1996]); any issue determination on a summary judgment is strictly prohibited (Straus v. New Wah Fung Corp., 269 AD2d 140 [1st Dept.2000]; Dollas v. W.R. Grace & Co., 225 AD2d 319 [1st Dept. 1996]; Cochrane v. Owens-Corning Fiberglas Corp., 209 AD 2d 557, 559-60 [1st Dept. 1995]; Rivera v. NYC, 212 Ad2d 403 [1st Dept. 1995]; Tunsupong v. Bronx Lebanon Hospital, 213 AD2d 236-7 [1st Dept. 1995]; Harris v. NYC, 147 AD2d 186, 191 [1st Dept. 1989].

On a motion for summary judgment, all that needs to be shown is the existence of triable issues of fact [cits.],and in making that determination, the court should draw all

Reasonable inferences in favor of the non-moving party (Perez).

Additionally, the moving party (Wells Fargo/Option One Mortgage)must prove his case "clearly and completely" (Curry v. Mackenzie, 239 NY 267, 269 [1924] before the opposing party can be required to show facts creating a triable issue of fact (Lurie v. Childs Hospital, 70 AD2d 1032 [3d Dept. 1979], Curry v. Mackenzie, supra, Sacramona v. Scalia, 36 AD2d 942 [1st Dept. 1971], O'Connor-Sullivan Inc. v. Otto, 283 AD 269 [3d Dept. 1954]).

Also of direct relevance to the case at bar is the rule that "In a motion for summary judgment,

the moving party Respondent has the burden of setting forth evidentiary facts sufficient to establish its cause sufficiently to entitle him to Judgment as a matter of law; anything less requires a denial of the motion even where

the opposing Petitioner 's papers are insufficient" (Coley v. Michelin Tire Corp., 99 AD2d 745,796 [2d Dept. 1984]).

Thus, where there is a "conflict" in "Testimony" it is "inappropriate" to "Grant a Summary Judgment Motion, since to do so would require the court to weigh issues of credibility" (Botfeld v. City of New York, 162 AD2d 652 [2d Dept. 1990]).

In fact, it has even been held that where a movant has adduced "strong evidence" in support of motion for summary judgment, the motion must be denied when the opposing papers raise a real issue of material fact (Roman Maronite Catholic Church v. Metropolitan Heat & Power Co. Inc., 137 Ad2d 513,514 [2d Dept. 1988]).

Parenthetically, it is a settled precedent that the facts should be viewed in a light more favorable to the opposing party by a court when considering a summary judgment motion (Sillman v. 20th Century Fox Corp., 3 NY2d 295 [1957], Nestlerode v. Federal Ins. Co., 66 AD2d 504 4th Dept. 1979]). And, a "deficiency in the affidavits on

both sides cuts against the Respondent rather than against the Petitioner[Perez] because it is the moving party who is seeking summary judgment, and the burden rests on him to establish affirmatively that his adversary does not have a viable cause of action against him" (O'Connor-Sullivan Inc. v. Otto, supra).

In this regard, the Court of Appeals has cautioned that it is improper for a court considering a summary judgment motion to make any determination as to the merits of any of the parties' claims despite any personal feelings the court may have in this regard (Black v. Chittenden, 69 NY2d 665 [1986]). Indeed, even where a court finds a particular claim to be "questionable', the court cannot Grant a motion for summary judgment where there exists some dispute or conflict on a material Issue of fact pertinent to the case under review(Berliner v. Thompson, 149 AD2d 887,889 [3rd Dept. 1989]).

Court Required: To determined whether disputed material issues of fact existed prior to determining whether Summary Judgment could be granted on constitutional claims; threshold finality inquiry; Matter of Morley v. Town of Oswegatchie, 70NY2d 925.

Summary Judgment Standard was not properly granted. (Tainted Process) Respondent did not establish their cause of action or defense sufficiently to warrant the Supreme Court, Hon. Linda S. Jamieson, Granting Summary Judgment December 16, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 4.P.1653-1654) as a matter of Law in Plaintiff's favor.

NOTICE OF Pendency

APP. Court of Appeals Recognizes: 6511, 6513, CPLR, 6513(a),(b), 6514 Article 65 of CPLR .
Cite: In the Matter of Sakow, 97 N.Y. 2d 436, 441 (2002); 13 Weinstein, Korn & Miller, NY Civ. Prac, §6513.04 (2000); Israelson v. Bradley, 308 NY 511, 516 (1955). If the terms are not met, the privilege is at an end.

RPAPL §1331 Failure to comply with the filing requirement "precludes entry of Final Judgment".

The Court of Appeals Opinion differ from the Appellate Second Department on this issue and has held that the statutory language of CPLR Article 65, legislative history and underlying policies...[do not]...permit a plaintiff to file a notice of pendency after a previously filed notice of pendency concerning the same causes of action or claims has expired without timely renewal."

ARTICLE 65 of the CPLR sets forth the authority and procedural requirements for securing a notice of pendency. Once the notice has been properly filed with the county clerk where the property is situated, it puts the world on notice of the plaintiff's potential rights. The statue was 'designed with a view toward balancing the interests of the claimant in the preservation of the status quo against the equally legitimate interests of the property owner in the marketability of his Title'...indeed, we have referred to a

litigant's ability to file a notice of pendency as an 'extraordinary ' privilege because of the relative ease by which it can be obtained and its powerful effect on the alienability of real property. The notice of pendency is a unique provisional remedy, in that the 'statutory scheme permits a party to effectively retard the alienability of real property without any prior judicial review. Critically, the filing of a notice of pendency requires no showing of the likelihood of success on the merits of the cause of action. Thus, 'a plaintiff can cloud a defendant's title merely by serving a summon and filing a proper complaint and notice of pendency stating the names of the parties, the object of the action, and a description of the property'.

To counterbalance of ease with which a party may hinder another's right to transfer property, this court has required strict compliance with the statutory procedural requirements {of CPLR article 65]. The Court of Appeals

have noted that [p]roper administration of the law requires promptness on the part of a litigant so favored and that he accept the shield which has been given to him upon the terms imposed, and that he not be permitted to so use the privilege granted that it become a sword usable against the owner of possessor of realty. If the terms imposed are not met, the privilege is at an end'.

A Notice of pendency is valid for three (3) years from the date of filing and may not be extended for additional three-year period upon a showing of good cause. The extension, however, must be requested prior to the expiration of the prior notice. This is an exacting rule; a notice of pendency that has expired without extension is a nullity'. For practical purposes, there is no distinction between the effect of an expired or canceled notice of pendency-both are void. Thus, the 'no second chance' rule we established.. for a canceled notice of pendency applies with equal force to one that has expired. Because CPLR

6513.. provides that a notice terminates automatically on the expiration of the three-year period unless extended, a lapsed notice of pendency may not be revived.

Filing another notice of pendency after the previous notice has expired or been canceled renders the time limit in CPLR 6513 useless and undercuts an important incentive for diligent practice. The Court of Appeals prefer the certainty of the 'no second chance rule', as it preserves the delicate balance between the 'interest of the claimant in the preservation of the status quo against the equally legitimate interests of the property owner in the marketability of his title'... Thus, we hold that an expired or canceled notice of pendency may not be refilled on the same cause of action or claim.

Conclusion

JURY TRIAL DEMAND

Bill of Rights : Due Process; Obligation of contracts taking of property; prohibited discrimination; Jury Trial in Civil Cases.

It is respectfully submitted by PETITIONER

Wherefore, I request the court grant me the following relief requested: (1) Trial by Jury in this matter; (2) Removal of all negative Reporting to Credit Files and correction of Credit Files; (3)Restoration of Mortgage to current state $289,000 from the offset of this proceeding & elimination of interest and penalty of foreclosure fees. which were the result of Wells Fargo /Option One Mortgage accounting procedures rather than any wrong-doing on the part of Petitioner Bernice Perez. Exemplary Damages, Rescissory Damages and Punitive Damages; and any further relief deemed appropriate.

Dated: September 9, 2010

Mount Vernon, New York,

Westchester, County

"S/".

Bernice Perez

45 Oakland Avenue

Mount Vernon, N Y 10552

173 (3)

No. 10-375

In The
Supreme Court of the United States

BERNICE PEREZ,

Petitioner,

vs.

WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION AS TRUSTEE FOR REGISTERED HOLDERS OF OPTION ONE MORTGAGE LOAN TRUST 2002 ASSET BACKED CERTIFICATES SERIES 2002-A WITHOUT RECOURSE,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of New York Appellate Division Second Judicial Department

BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Is Petitioner entitled to a Writ of Certiorari based on the same failed arguments involving settled New York foreclosure law that were considered and rejected by the State Appellate Court on more than one occasion?

ANSWER: No.

2. Does Petitioner present *any* reason whatsoever why this Petition should be granted under *Supreme Court Rule* 10?

ANSWER: No.

CORPORATE DISCLOSURE STATEMENT

Respondent Wells Fargo Bank N.A.'s parent corporation is Wells Fargo & Company and Wells Fargo & Company is a publicly held corporation that owns 10% or more of the stock of Wells Fargo Bank N.A. Except for Wells Fargo & Company, no other publicly held corporation owns 10% or more of the stock of Wells Fargo Bank N.A.

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RULES

Supreme Court Rule 10 6

STATEMENT OF THE CASE

Petitioner is petitioning for a Writ of Certiorari based upon her (repeatedly) failed appeal from a New York state court Judgment of Foreclosure and Sale. The two cornerstones of Petitioner's Petition (buried amid her stream of consciousness attack on the character of Respondent and anyone remotely connected with it) are her relentless attack on her default under the mortgage claimed by Respondent and an alleged lack of standing on the part of Respondent.

The simple fact is, Petitioner defaulted under the mortgage and then under a repayment plan that attempted to address her mortgage arrears. Respondent filed this foreclosure action as was its right under New York law and Petitioner filed a contesting Answer. However, Petitioner did not raise a lack of standing on the part of Plaintiff as an Affirmative Defense, nor did she file a pre-answer motion to dismiss on that ground, thus effectively waiving that defense under New York law.

The state Trial Court and the Second Department and the Court of Appeals ruled in Respondent's favor.

There is *no* reason whatsoever to grant this Petition involving a *2003* foreclosure case.

REPLY TO STATEMENT OF FACTS

Petitioner Bernice Perez ("Petitioner") is petitioning this Honorable Court for a Writ of Certiorari seeking relief from the state Trial Court's September 24, 2008 Judgment of Foreclosure and Sale and the affirming thereof by the Supreme Court of New York Appellate Division, Second Department and the New York Court of Appeals.

This is an action commenced on July 17, 2003 to foreclose a $292,000 first purchase money mortgage given by Petitioner on real property commonly known as 45 Oakland Avenue, Mount Vernon, NY 10552.

Petitioner filed a contesting Answer. However, Petitioner did not raise a lack of standing on the part of Plaintiff as an Affirmative Defense. Petitioner did not file a pre-answer motion to dismiss on that ground.

Respondent was granted Summary Judgment striking Petitioner's contesting Answer and dismissing her affirmative defenses on December 16, 2005.

On January 13, 2006, Petitioner appealed from the Trial Court's Order granting Summary Judgement.

By decision and Order dated June 12, 2007, the Appellate Division, Second Department affirmed the Trial Court's granting of Summary Judgment to Respondent. (Appendix G page 108) Petitioner did not seek reconsideration of this Order nor take any further appeal from same.

Respondent was granted a Judgment of Foreclosure and Sale on September 24, 2008. (Appendix K page 123)

On October 21, 2008, Petitioner appealed from the Trial Court's September 24, 2008 Judgment of Foreclosure and Sale. The Appellate Division, Second Department, in an opinion dated February 9, 2010, affirmed the Judgment of Foreclosure and Sale. The Second Department specifically rejected Petitioner's claims of lack of standing and lack of service of process. (Appendix O page 184)

Petitioner moved for leave to appeal to the Court of Appeals for the State of New York from the Second Department decision. Petitioner's Motion was denied by Order dated May 6, 2010. (Appendix P page 229)

Petitioner now is petitioning this Court for a Writ of Certiorari.

REASON WHY THE PETITION MUST BE DENIED

THE STATE TRIAL COURT PROPERLY GRANTED AND THE STATE APPELLATE COURT PROPERLY AFFIRMED THE JUDGMENT OF FORECLOSURE AND SALE; THERE ARE NO COMPELLING REASONS TO GRANT THIS PETITION.

Petitioner is petitioning for a Writ of Certiorari based upon her (repeatedly) failed appeal from a New

York state court Judgment of Foreclosure and Sale. The two cornerstones of Petitioner's Petition (buried amid her stream of consciousness attack on the character of Respondent and anyone remotely connected with it) are her relentless attack on her default under the mortgage claimed by Respondent and an alleged lack of standing on the part of Respondent.

Petitioner's attack on her default under the mortgage was the subject of a Motion for Summary Judgment by Respondent which was granted by the state Trial Court.

The grant of Summary Judgment is the procedural equivalent of a trial and results in a final judgment on the merits. *Collins v. Bertram Yacht Corp.*, 42 N.Y.2d 1033, 399 N.Y.S.2d 202 (1977).

Petitioner has had her "trial". She lost.

Petitioner appealed from the Order for Summary Judgment. She lost.

The above undeniable facts proved fatal to Petitioner's appeal to the New York Appellate Division Second Department as a matter of law. *243 West 98th Condominium v. Shapiro*, 12 A.D.3d 591, 786 N.Y.S.2d 67 (2nd Dept. 2004). Petitioner raised the same failed arguments on appeal to the Second Department regarding her contention that she did not default under the mortgage that were already considered and rejected by the Appellate Court in her prior appeal to that very Court.

Petitioner is *still* attempting to jump on the standing bandwagon after having litigated this matter for almost six years and without having raised this defense in her Answer or in a pre-answer motion to dismiss before the state Trial Court. This undeniable fact was fatal to her appeal as a matter of New York state law, as Petitioner had effectively waived this defense. *Wells Fargo Bank Minnesota NA v. Mastropaolo,* 42 A.D.3d 239 (2nd Dept. 2007); *HSBC Bank USA v. Dammond,* 59 A.D.3d 679 (2nd Dept. 2009).

When a mortgagor defaults on loan payments, even if only for a day, a mortgagee may accelerate the loan, require that the balance be tendered or commence foreclosure proceedings and equity will not intervene. *First Federal Savings Bank v. Midura,* 264 A.D.2d 407, 694 N.Y.S.2d 121 (1999). Once a mortgagor's default has been declared and the mortgage loan accelerated, the mortgagee is not required to accept a tender of less than full repayment as demanded. *Id.*; *EMC Mortgage Corp. v. Stewart,* 2 A.D.2d 772, 769 N.Y.S.2d 408 (2003).

The simple fact is, Petitioner defaulted under the mortgage and then under a repayment plan that attempted to address her mortgage arrears. The Trial Court and the Appellate Court have already ruled in Respondent's favor in this regard.

Petitioner's desperate attempt to raise lack of standing as a defense was and remains frivolous as a matter of New York law.

A Petition for a Writ of Certiorari shall be granted "only for compelling reasons." *Supreme Court Rule* 10. Petitioner does not even suggest the existence of any of the reasons set forth in *Supreme Court Rule* 10(a)(b) or (c).

There is *no* reason whatsoever to grant this Petition involving a *2003* foreclosure case.

CONCLUSION

Based on all the foregoing, it is respectfully submitted that the Petition must be denied.

Respectfully submitted,

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October 20, 2010